

# CITY COUNCIL AGENDA

CITY COUNCIL CHAMBERS . 11465 WEST CIVIC CENTER DRIVE . AVONDALE, AZ 85323

**WORK SESSION**  
**August 12, 2013**  
**6:00 PM**

## CALL TO ORDER BY MAYOR ROGERS

### 1 ROLL CALL BY THE CITY CLERK

### 2 [HISTORIC AVONDALE DESIGN AND DEVELOPMENT GUIDELINES \(PL-12-0139\)](#)

Staff will present information related to the proposed staff-initiated Historic Avondale Design and Development Guidelines and solicit ideas and suggestions from the City Council on how the document can achieve the City's goals related to revitalization and redevelopment in that portion of the City. For information and discussion only.

### 3 [PROPOSED TEXT AMENDMENT - ZONING ORDINANCE UPDATE \(PL-12-0226\)](#)

City Council will receive information regarding proposed amendments to the Zoning Ordinance. For information, discussion and direction only.

### 4 ADJOURNMENT

Respectfully submitted,

A handwritten signature in cursive script that reads "Carmen Martinez".

Carmen Martinez  
City Clerk

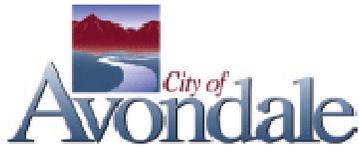
Individuals with special accessibility needs, including sight or hearing impaired, large print, or interpreter, should contact the City Clerk at 623-333-1200 or TDD 623-333-0010 at least two business days prior to the Council Meeting.

Personas con necesidades especiales de accesibilidad, incluyendo personas con impedimentos de vista u oído, o con necesidad de impresión grande o interprete, deben comunicarse con la Secretaria de la Ciudad at 623-333-1200 o TDD 623-333-0010 cuando menos dos días hábiles antes de la junta del Concejo.

Notice is hereby given that pursuant to A.R.S. § 1-602.A.9, subject to certain specified statutory exceptions, parents have a right to consent before the State or any of its political subdivisions make a video or audio recording of a minor child. Meetings of the City Council may be audio and/or video recorded and, as a result, proceedings in which children are present may be subject to such recording. Parents, in order to exercise their rights may either file written consent with the City Clerk to such recording, or take personal action to ensure that their child or children are not present when a recording may be made. If a child is present at the time a recording is made, the City will assume that the rights afforded parents pursuant to A.R.S. § 1-602.A.9 have been waived.

De acuerdo con la ley A.R.S. § 1-602.A.9, y sujeto a ciertas excepciones legales, se da aviso que los padres tienen derecho a dar su consentimiento antes de que el Estado o cualquier otra entidad política haga grabaciones de video o audio de un menor de edad. Las juntas del Concejo de la Ciudad pueden ser grabadas y por consecuencia, existe la posibilidad de que si hay menores de edad presentes éstos aparezcan en estos videos o grabaciones de audio. Los padres pueden ejercer su derecho si presentan su consentimiento por escrito a la Secretaria de la Ciudad, o pueden asegurarse que los niños no estén presentes durante la grabación de la junta. Si hay algún menor de edad presente durante la grabación, la Ciudad dará por entendido que los padres han renunciado sus derechos de acuerdo a la ley contenida A.R.S.

§ 1-602.A.9.



# CITY COUNCIL REPORT

**SUBJECT:**

Historic Avondale Design and Development Guidelines (PL-12-0139)

**MEETING DATE:**

August 12, 2013

**TO:** Mayor and Council

**FROM:** Tracy Stevens, Acting Development and Engineering Services Department Director (623) 333-4012

**THROUGH:** Charlie McClendon, City Manager (623) 333-1015

**PURPOSE:**

Staff will present information related to the proposed staff-initiated Historic Avondale Design and Development Guidelines and solicit suggestions from the City Council on how the document can meet the City's goals related to that portion of the City and serve as a companion to the proposed Historic Avondale Infill Overlay Zoning District. For information and discussion only.

**BACKGROUND:**

The Old Town Avondale Business District (OTAB) Design Guidelines (Exhibit B) were adopted in 2001 to "provide guidelines for infill and renovation projects that will enhance the existing character and the aesthetics of Old Town Avondale by providing a definition of style or theme, materials, and site design principles for a safe, attractive, and appealing environment for local residents and visitors alike." This existing document only applies to properties fronting Western Avenue between Dysart Road and Central Avenue, and establishes recommendations for site organization and development, building design, landscape, signage, lighting and public art.

During the Council fall retreat, it was suggested that a new document be created that will assist in the revitalization of Historic Avondale. Staff has been working on a document that is less restrictive and more inspirational to encourage and enhance the area's growth potential. As an example the former guidelines identify 30 specific colors of paint that may be used on facades. Deviation from these colors, even slightly, is not allowed. The Western Avenue business community has voiced disappointment that some efforts to improve properties were made more difficult by this prescriptive document. With the creation of the proposed Historic Avondale Infill Overlay Zoning District, an update is needed to allow existing and future businesses an opportunity to be creative, while ensuring cohesive, quality development in the area.

Historic Avondale refers to a much wider area than Western Avenue. Historic Avondale's boundaries (Exhibit A) are Lower Buckeye Road to the south, the Agua Fria River to the east, Van Buren Street to the north, and the City's irregular limit with Goodyear to the west. This overall area was largely developed three or more decades ago, and will benefit from design requirements that will enhance the historic character of the area while being respectful of the limitations due to smaller size lots or inadequate infrastructure.

The Planning Commission held a work session to discuss this update on July 18, 2013. Discussion was focused primarily on Western Avenue, in particular the necessity of shading sidewalks to increase pedestrian usability and the importance of incorporating art into the revitalization of the area.

Also, a meeting was held with interested parties on June 20, 2013 at the Sam Garcia Library. There were fifteen people in attendance, representing nine different businesses on Western Avenue within the Old Town Avondale Business District. Staff briefly discussed concepts for the new Historic Avondale Design and Development Guidelines, including potential street improvements to Western Avenue, Dysart Road, Central Avenue, and Main Street. Staff asked attendees to share their thoughts on the strengths and weaknesses of the area and attendees provided a wealth of information. Weaknesses included a lack of parking, incomplete, narrow, or blocked sidewalks, undesirable signs, and lack of visibility, poor landscape maintenance, and vacant, dilapidated, or damaged buildings. Positives included the sense of community amongst the business owners, the small-town feel of the area, and the City's continuing assistance in helping the area revitalize.

## **DISCUSSION:**

The purpose of this update is to: *“Retain and enhance Historical Avondale’s character through preservation, renovation, and infill projects that provide revitalization and economic diversification consistent with the City’s historical attributes while addressing the current and future needs of residents and visitors.”* This purpose applies to Western Avenue and the entirety of the City’s Revitalization Area. For example an emphasis on strong wayfinding and pedestrian connectivity need to be addressed throughout the entire area. However, both staff and Historic Avondale residents and business owners recognize that there are distinct subareas within the overall boundary that will lend themselves to some different standards depending on location. For that reason, the proposed document will contain a list of general guidelines for the entire Historic Avondale area, as well as separate subsections for subareas that will apply only to those subareas, such as Western Avenue, Dysart Road, or Eliseo C. Felix Jr. Way. These distinctions are necessary because the land uses occurring on each of these streets is distinct from one another; application of the same guidelines used on Western Avenue throughout the entire area would be unreasonable.

Building on Avondale’s heritage and cultural influences, retaining historic single family home elements, and expanding the art influence is a primary goal of this document. The purpose is to develop guidelines intended to create a strong “Sense of Place”, a feeling of common identity that stretches across all of Historic Avondale, despite the differing land use characteristics between sub areas. Areas of emphasis include, but are not limited to:

- Creating usable, historic themed streetscapes. For example, on Western Avenue, it is important to provide businesses room for outdoor dining, merchandise display, and pedestrian amenities, such as seating – all key components of traditional “Main Streets”.
- Expanding design options into the single family residential areas to retain elements of previous years.
- Identifying a different theme on Dysart Road or Van Buren Street, to encourage business development that is aesthetically pleasing while taking into account the limitations on land.
- Offering options for covered walkways, misting systems, and lighting, and developing signage/way finding systems that provide directional information to businesses and points of pride within Historic Avondale.
- Addressing parking in ways that boost multi-modal efforts, either pedestrian or automobile depending on the location, to all business within the boundaries.
- Analyze opportunities to enhance City owned and operated public parking throughout the area to remove the burden on businesses.
- Identify measures that can be taken to enhance on street parking, provide parallel parking, identify locations for new parking lots, or enhance the existing public parking spaces.
- Enhancing opportunities for art walks, festivals, and other events, possibly by improving better lighting for safety, aesthetics, and ambiance.
- Improving the image of the area by enforcement of illegal signage, etc. Business owners listed “cheap” signage as one of the largest aesthetic problems facing the area today. Ensuring that temporary signage does not detract from the overall character of the area is a simple step that could produce tremendous results.
- Identifying ways in which the pedestrian network throughout all of Historic Avondale can be

improved. There are countless instances in the area where sidewalks are discontinued, too narrow, or blocked by utility poles. Solutions are being identified to complete that network and encourage more pedestrian activity throughout the area.

- Landscaping is a crucial component for the area; finding ways to add sidewalk shading and new pavement surfaces throughout the area, or provide key entry areas into the Historic area that pronounce a sense of arrival.
- Working to overhaul the architectural guidelines to allow for greater creativity in façade/building design that reflects the historic nature of the area. As mentioned above, the existing architectural guidelines are very specific and restrictive. Relaxing these guidelines, while still ensuring a minimum level of quality, will allow the residents and business owners in the area a greater amount of expression, leading to a more vibrant locale.

Tonight, staff encourages the Council to share their thoughts on the proposed areas of focus for the guidelines and provide direction on any particular areas of emphasis that staff should take into account when creating this document.

### **RECOMMENDATION:**

This item is for information and discussion only; the item is scheduled to return to the City Council in its final form in the 3<sup>rd</sup> Quarter. No action is required this evening.

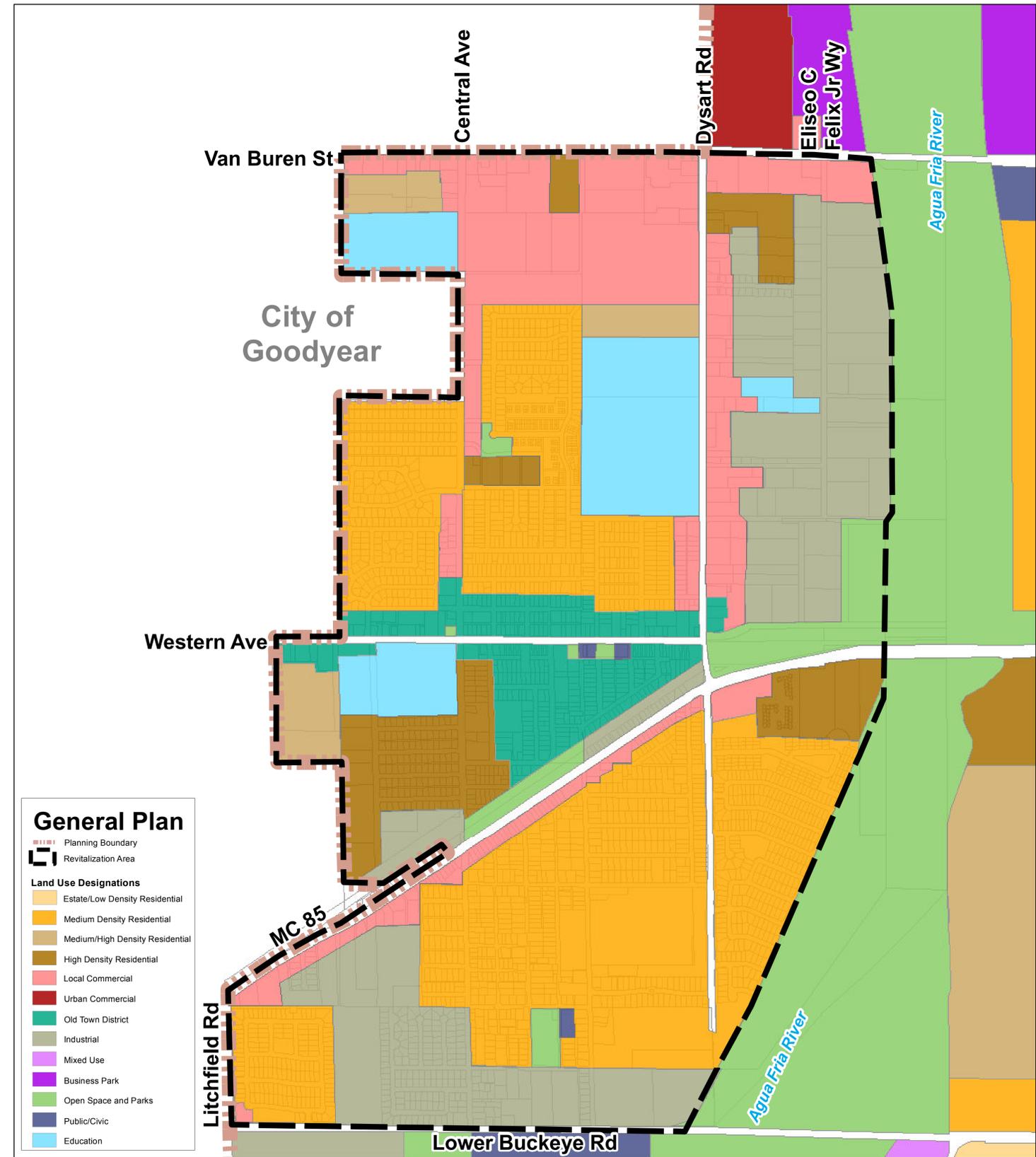
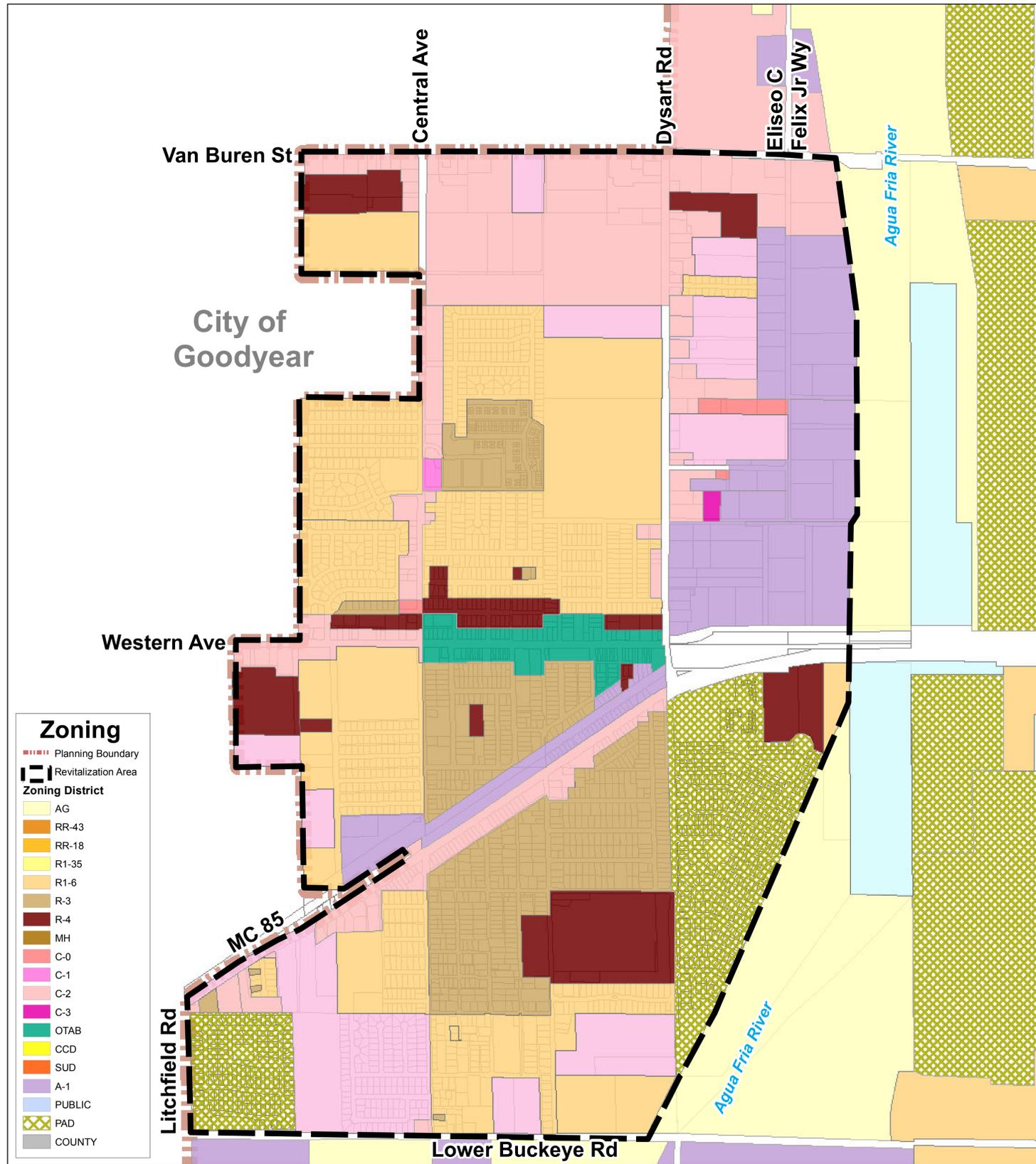
### **ATTACHMENTS:**

Click to download

- [Exhibit A - Map of Historic Avondale](#)
- [Exhibit B - Existing "Old Town Avondale Business District Design Guidelines", adopted 2001](#)



# HISTORIC AVONDALE & ADJACENT AREAS





OLD TOWN AVONDALE BUSINESS DISTRICT  
DESIGN GUIDELINES

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## INTRODUCTION & BACKGROUND

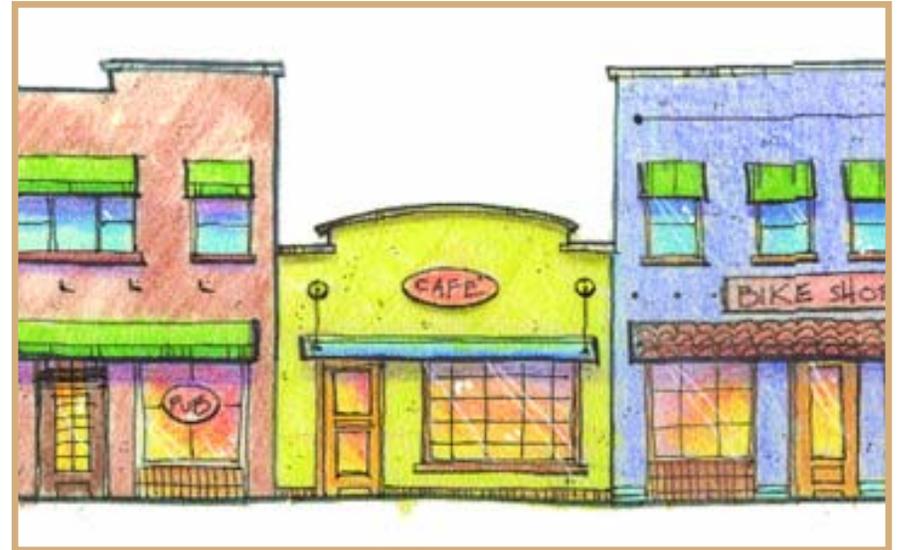
Originally near the Coldwater Stage Station in the 1880's, commerce was at the heart of Avondale even then. Avondale had its beginnings as one of the very earliest stage stations in the region, supplying travelers with provisions on their way from Tucson to northern Arizona and California. The town's most famous historical figure, Billy Moore, established a saloon, general store and stage stop near the Agua Fria crossing. The town grew to include and took its name from Avondale Ranch, where the post office was established in 1896.

Subsequent development resulted in a conglomeration of styles and architecture along Western Avenue typical of small western towns, with ranching, the railroad and cotton farming as main industries. Recently, the city has seen tremendous growth in new development, both residential and commercial, while the Old Town area along Western Avenue preserves the historic business district and safeguards opportunities for small, independent businesses.

In 2000, the City Council created a Central Business District Advisory Committee (CEBDAC), made up of business and property owners from the city's historic business districts, to advise on implementation of their shared vision of a revitalized and "pedestrian-friendly" downtown.

Implementation guidance for creating a first-class pedestrian facility can be found in a document published by the Maricopa Association of Governments (MAG), the MAG Pedestrian Area Policies and Design Guidelines (October 1995). Following the recommendations in this document, the City of Avondale sought and received a grant from MAG to create Design Guidelines for the Old Town Avondale Business District.

With assistance from Logan Simpson Design, a consultant provided by the grant, the City of Avondale involved business owners and citizens alike in a series of public workshops and presentations that culminated in the creation of this document.



## GOALS & MISSION STATEMENT

Design Guidelines are a means by which a community can enhance visual appeal and maintain existing character areas. The intent of these guidelines is to provide guidance and suggest alternatives when initiating improvements or designing a new building.

The project area to which these design guidelines apply—the Old Town Avondale Business District—comprises all properties that front or face Western Avenue between Dysart Road and Central Avenue.<sup>1</sup> This includes all corner occupancy lots that front both Western Avenue and a side street. Thus, a structure located on a corner lot will be required to be in compliance with these guidelines on a minimum of two sides, one side fronting Western Avenue and one side fronting the side street.

The mission statement of the guidelines, as expressed by the downtown business owners is to *provide guidelines for infill and renovation projects that will enhance the existing character and the aesthetics of Old Town Avondale by providing a definition of style or theme, materials, and site design principles for a safe, attractive, comfortable, and appealing environment for local residents and visitors alike.*

The goal of these guidelines is to ensure quality new construction and high quality improvements to existing structures. Such modifications will be in accordance with the overall theme or character of the Old Town Avondale district. Besides managing physical modifications, these guidelines will guard the value of business and property owners' investments, thus assisting in the overall success of downtown.



**Project Area - Old Town Avondale**

<sup>1</sup> Cross-reference Section 306, C, 6 of the Zoning Ordinance of the City of Avondale, which states that the OTAB district [Old Town Avondale Business District] shall be exempt from design requirements respecting site organization and development [i.e., Sect 504], building design [Sect 505], landscaping [Sect 503], lighting [Sect 504, C, 3; Sect 907, B; non-applicable reference also found in Sect 609, 4, e], signage [Sect 9] and public art [no existing provisions] given elsewhere in the ordinance, but shall be required to comply with OTAB District standards promulgated by the City of Avondale from the date of such promulgation. The present document constitutes the referenced standards.

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This document has been developed to provide clear design guidelines to property owners, developers, planners, and architects, with regard to properties in the Old Town Avondale Business District. Each item addressed will include a brief description, and general application. Following the descriptions, three application categories list what is preferred, what is acceptable with city approval, and what is not allowed. These categories are listed as Recommended, Conditionally Acceptable, and Prohibited.

The category listed as Recommended includes the preferred solution, application, design, and materials for the particular element in question.

Conditionally Acceptable lists those solutions, applications, designs, and materials which are not preferred, but may be allowed based on City approval and negotiation.

The final category is that of Prohibited, which describes those solutions, applications, designs, and materials that are not allowed. Nothing listed in this category will be allowed within the project area.

It should be noted that all improvements presented within this document are to be compliant with all regulations relevant to accessibility, including the Americans with Disabilities Act (ADA) and ANSI access standards.

## **DESIGN REVIEW REQUIREMENTS**

All new construction and any exterior modifications to existing structures or sites within the Old Town Avondale Business District must be approved by the City of Avondale.

Please contact the Planning Division of the Development Services Department for application requirements and review procedures. The Development Services Department is located at 1211 South 4th Street, Avondale, Arizona 85323. Telephone: 623-932-6088.

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## A. SITE ORGANIZATION & DEVELOPMENT

### Relationship to Zoning Ordinance Section 504.

Areas covered by Section 504, which are addressed here, include: Screening Standards, Driveways, and Miscellaneous Design Standards. The provisions of §504, A,C, and D are incorporated, with the exception of provision §504, D, 3, which is replaced and enlarged by the section of the design standards document addressing outdoor lighting.

#### A1. Setbacks

Description: A requirement stating the allowable placement of structures behind a property line or easement.

- Recommended - Front setbacks - Full front build-out to the property line with recessed entry, except in the case of property owners desiring to add landscaping, an entry court, outdoor dining, or similar feature, to the front of the property, in which case a maximum 10-foot front setback from the property line is desirable. The setback will be required to be covered with architectural shade device or overhead structure.
- Recommended - Side setbacks - Full lateral build out, with no side setbacks.
- Conditionally Acceptable - Front setbacks - Maximum 10-foot setback for landscaping, entry court, outdoor dining, or similar feature. Areas between property line and face of building must accommodate some type of use such as outdoor dining or temporary display. The adjacent establishment's setback should be considered in determining the setback for a new structure.



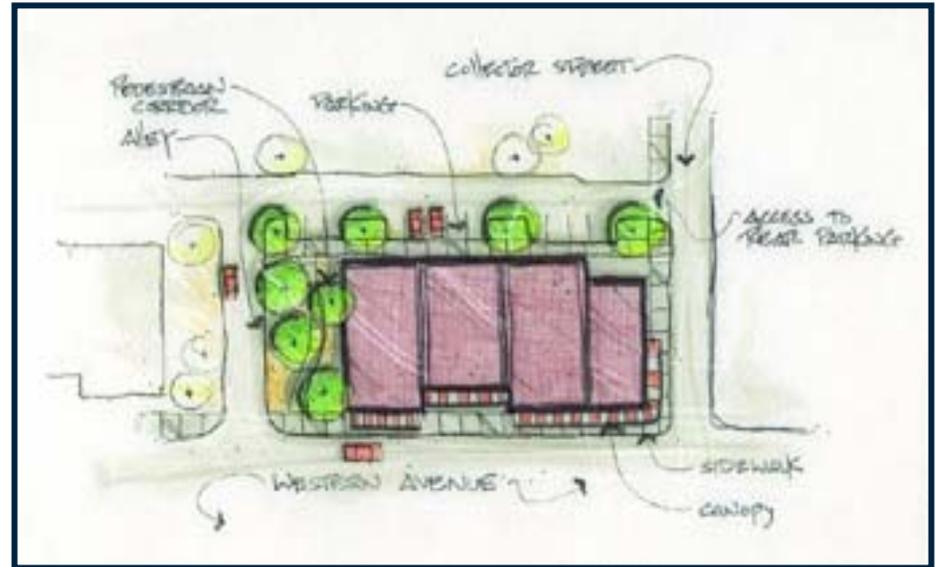
**Setback - Full Front Build Out**

- Conditionally Acceptable - Side Setbacks - Landscaped side setback area containing pedestrian-friendly features/amenities.
- Prohibited - Placing of structures more than ten feet from property lines, except as required by residential buffer. Surface parking between the structure and the front property line.

## A2. Parking Lot Location

Description: The placement and configuration of “at-grade” or structural vehicle parking. Guidelines can also be found in Section §306, B, 3.

- Recommended - Parking lot location to the rear of businesses, such that they are not visible from Western Avenue, with alleyway or side street ingress and egress. Parking lots behind buildings should be contiguous to each other, thus minimizing the number of access points to Western Avenue. Parking lots must be landscaped and screened.
- Conditionally Acceptable - Structured parking (subsurface or above grade). Ingress and egress from Western Avenue is acceptable only where the property in question cannot satisfy its parking requirements through the provisions of §306, C, 10, 11, 13, 14, but location of the parking lot shall be in the rear of the property.
- Prohibited - Parking between the building and the front property line.



**Parking At Rear**

## A3. Driveways

Description: The provisions of §504, C, are incorporated.

- Recommended - No driveways along the Western Avenue frontage.
- Conditionally Acceptable - Adding a driveway to the Western Avenue frontage (only where the property in question cannot satisfy its parking requirements through the provisions of §306, C, 10, 11, 13, 14).
- Prohibited - More than one driveway on Western Avenue per property.

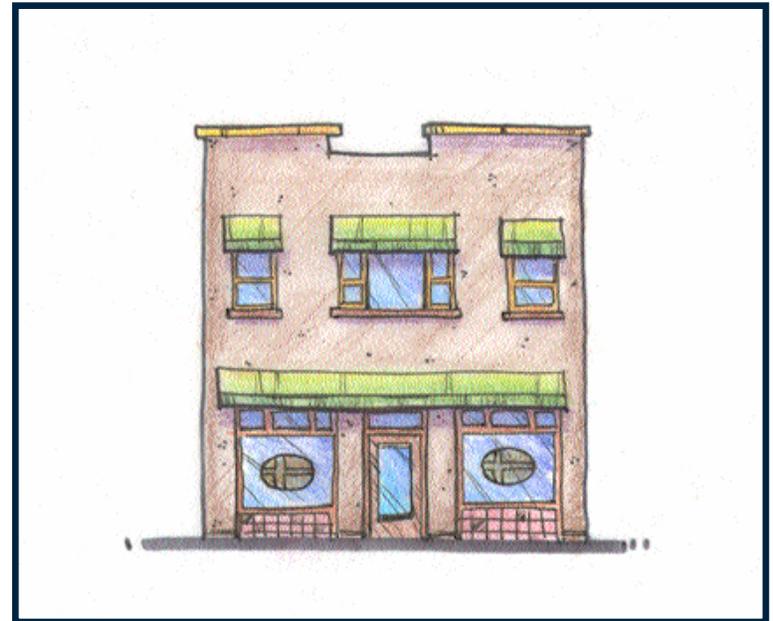
#### A4. Primary Entrance (Front Door) Location

Description: Placement and orientation of main pedestrian access to a building.

- Recommended - Ingress and egress facing Western Avenue. Commercial storefront primary entrances should typically be recessed or sheltered by use of a porch, canopy, or awning. They should contain decorative features highlighting the entrance.
- Conditionally Acceptable - Secondary entrance may be located at back of building where the property in question cannot satisfy its parking requirements through the provisions of §306, C, 10, , 13, 14, but location of the parking lot shall be in the rear of the property.
- Prohibited - Primary entrance on back or side of building.



Primary Entrance - Offset



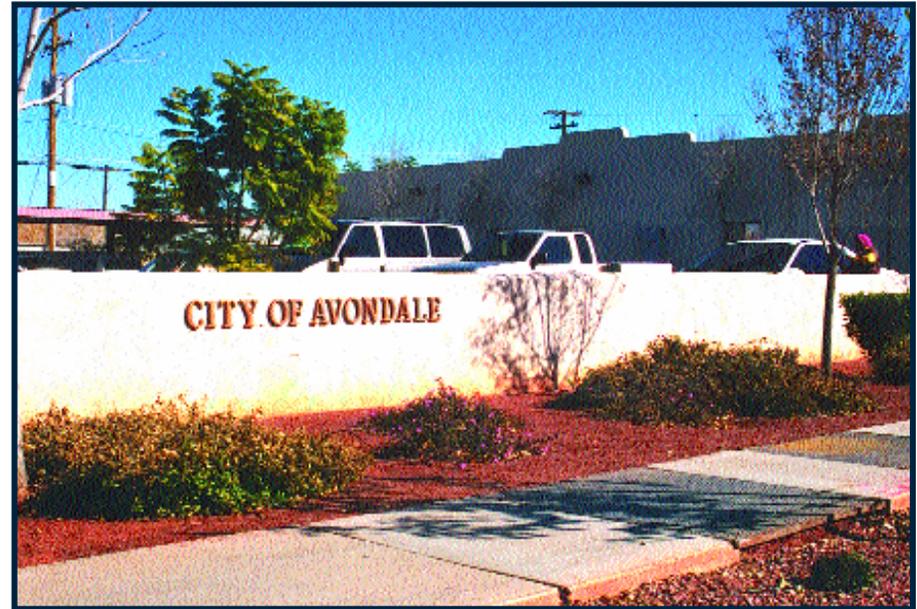
Primary Entrance - Centered

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## A5. Screen Walls (Parking, Utility, Etc.)

Description: Walls or fences designed to mitigate the visual impact of parking lots, utility boxes, and associated equipment. Provisions of Section §504, A are incorporated.

- Recommended - Walls shall be of a material compatible with that of the adjacent building, if not the same. Possible materials may include, but are not limited to: brick, slump block, masonry with stucco or mortar wash finish, and stucco finish. Screen walls around utility boxes must allow for unobstructed access for routine maintenance and repair (contact specific utility company for applicable clear-zones).
- Conditionally Acceptable - Colored concrete masonry units with texture or finish. Stone veneer. Berms with landscaping. Trellis with dense evergreen plant material that completely covers the trellis and provides screening equivalent to a wall or earth berm.
- Prohibited - Wood pickets or other wood fencing material, grape stakes, metal fencing material, chain-link fence with or without slats, split-rail-style fencing, and standard, unfinished concrete masonry units. Landscape alone does not constitute a screen.



**Screen Walls**

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## B. BUILDING DESIGN

### Relationship to Zoning Ordinance Section 505.

General Requirements and Specific Building Design Requirements per Section 505 are addressed. Provisions of §505 are incorporated, with the exception of provision §505, B, 1, which is replaced and enlarged by the present section of the design standards document.

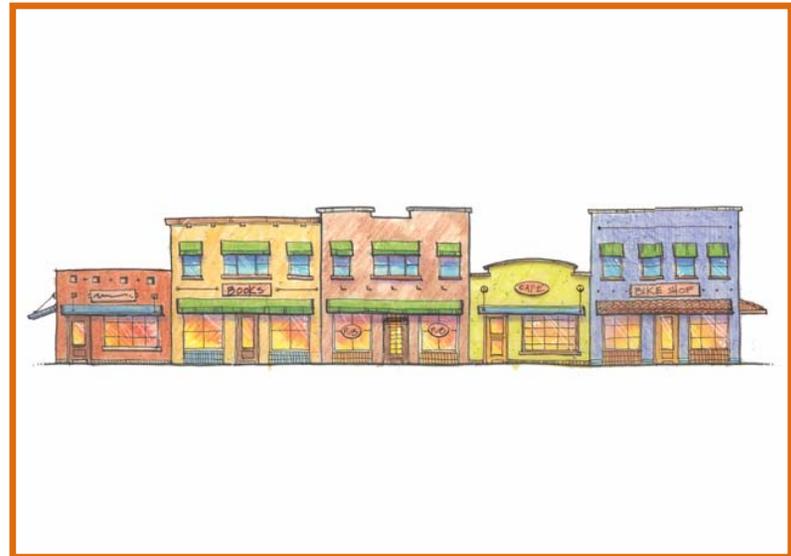
#### B1. Height (scale)

Description: The overall vertical scale or variation in elevation of a structure.

- Recommended - Two-story buildings. Heights that are within an acceptable range of similar height adjacent structures (site-dependent). Heights of adjacent two story buildings can vary a maximum of 10 percent. Thirty feet is the maximum allowable building height.
- Conditionally Acceptable - One-story buildings.
- Prohibited - Greater than two-story buildings.



Building Height



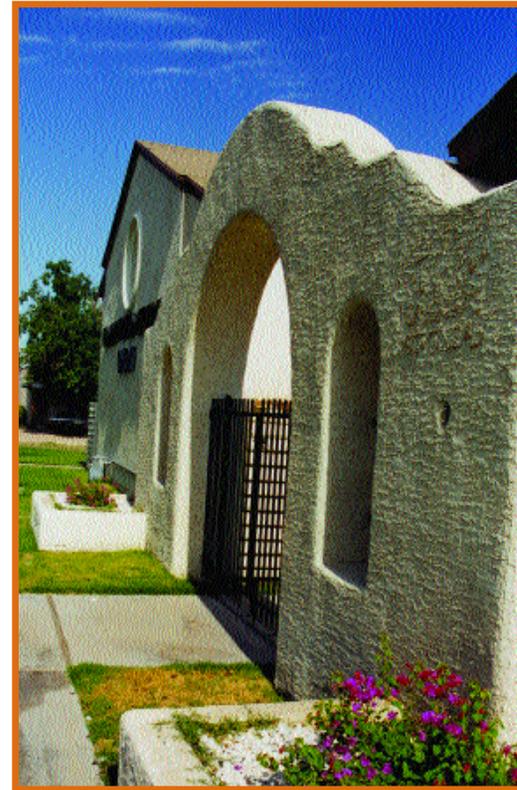
Building Height

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## B2. Facade Materials

Description: The type, form, and implementation of materials installed to or on structures. The facade treatment shall be the primary exterior finish for the building. Please see Architectural Detail (page 16) for additional details.

- Recommended - Exterior plaster (smooth-trowelled), horizontal clapboard, and masonry with stucco or mortar wash finish. Because of the vast number of materials available, other types and forms of listed materials may be submitted for consideration and possible approval. Utilities must be camouflaged or screened.
- Conditionally Acceptable - Wood, except for prohibited forms listed below; brick, and cut stone.
- Prohibited - Wood shingles, faux material or treatments, glass block, metals, and alloys (stainless steel, brushed aluminum, etc.). Imitation or undressed masonry, reflective glass, parquet materials, vertical clapboard, and metal siding. Downspouts located on facade, facing Western Avenue.



**Stucco Finish**

### B3. Roofs

Description: Roof line - The form or lines created by roofs, either false, parapet or structural.

- Recommended - Use of architecturally applicable pediments and parapet walls. All rooftop utilities and mechanical equipment elements must be screened by use of parapet walls or screens. Roofs may be flat or sloped consistent with surrounding buildings. Decorative parapets and defined cornice lines are encouraged. Roofing materials to be consistent with adjacent structures, if visible, and to code.
- Conditionally Acceptable - Rounded corners, stepping of roofline.
- Prohibited - Rooflines that allow visual access to rooftop mechanical equipment. A-frames, mansards, geodesic domes, Quonset hut roofs, or chalet style buildings.

Description: Roof materials - The visible portions of the roof, including top, fascia, and false fronts.

- Recommended - Spanish ceramic tile, concrete tile. Non-reflective copper. Flat roofs may be treated with any material, provided it is not visible from Western Avenue.
- Conditionally Acceptable - Standing-seam metals.
- Prohibited - Wood of any type. Crushed stone, corrugated metal or fiberglass, and asphalt sheeting/shingles or shakes. Reflective metals.



Roofs



Roofs

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## B4. Overhead Structures

Description: Device installed on facade of building to provide shade to pedestrian area, display windows. Includes porches and colonnades, trellises and pergolas, canopies, awnings, and recessed doorways. The space created by these features often allows for additional display space and accentuates the entry into the building. Canopies and awnings that are unsupported by post structures may extend over right-of-way to the edge of the sidewalk.

- Recommended - Shade-providing devices on the facade of the ground floor are required. All overhangs that extend into the pedestrian environment or encourage pedestrian activity undercover shall allow for unobstructed travel through and within the space. A minimum of seven feet in clearance height is required. Awnings will complement the width of the structure they are over and in no case exceed the width of the structure by more than 20 percent. All accessibility requirements apply.
- Conditionally Acceptable - Accent materials that complement base building material. Different clearance heights on canopies and awnings for existing structures.
- Prohibited - Plain metal post supports for overhangs. Devices that do not complement the character of the storefront. Elements and structures that obscure architectural features and details. Support posts that intrude into the right-of-way. Any overhead device, except awnings, less than twelve feet in length.



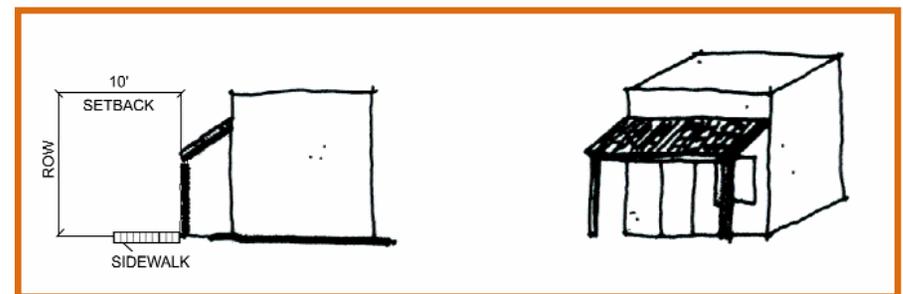
**Overhead Structure**

Description: Porches or colonnades are generally considered to be structural attachments to the face of a building, with support posts (porch) or columns (colonnade), creating a shaded area for pedestrian use or display of goods. These structures must be set back from property line. These structures are not required to appear as an extension of a building, but rather an attached shade device using a combination of columns or posts, beams, and joists. Porches and colonnades may be constructed with a “solid” overhead cover using an approved type of roofing material. However, the use of an “open” roof, such as that found in the following section regarding trellises and pergolas, can also be utilized with a colonnade-type structure. Classification as a colonnade with an open roof, as opposed to a trellis, would be based on the greater mass and weight of the columns and beams.

- Recommended - Wood posts and beams; masonry, stucco, stacked stone, and brick columns; clay or concrete roofing tile.
- Conditionally Acceptable - Ornamental metals as columns. Hand railings located between upright supports.
- Prohibited - Wood shingles, shakes, asphalt shingles for roofing. Vertical infill, such as shade screens, between posts on Western Avenue.



Porch



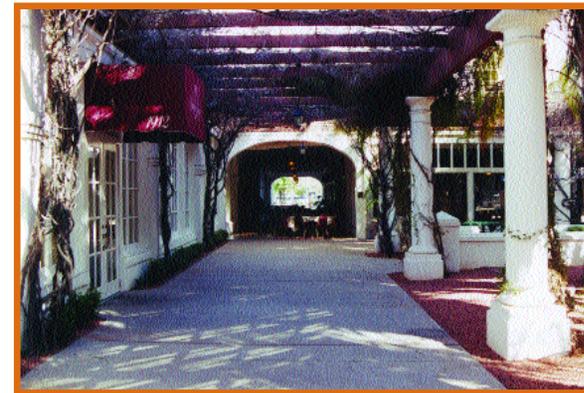
Porch

Description: Trellises are similar to an open-roofed porch, but with less massive columns, beams, and lintels. The primary purpose of these types of structures is to provide shade for pedestrians. Adequate setbacks are required to insure no support elements or posts are located within the public right-of-way.

- Recommended - Wood posts and beams, decorative iron and similar metals, stucco, and brick columns. Overhead lintels may include branch/stick material fastened to beams. Plant material in the form of climbing vines is encouraged with trellis-type structures. Design and construction that depicts high-quality materials, design, and installation.
- Conditionally Acceptable - Hand railings located between upright supports.
- Prohibited - Garden-style lattice, residential-style construction and materials. Vertical infill, such as shade screens, between posts on Western Avenue.



Trellis



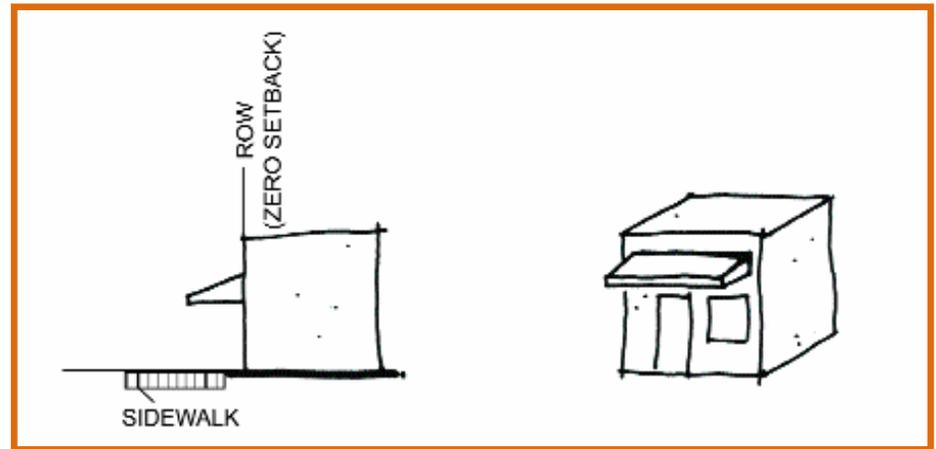
Overhead Structure



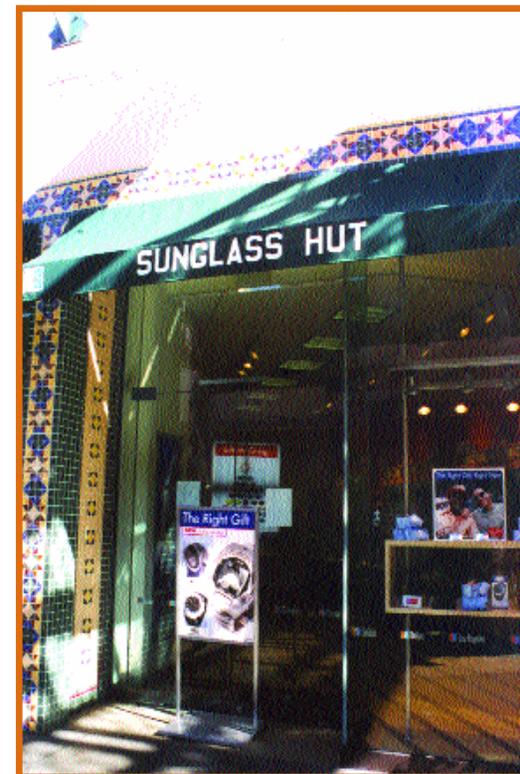
Trellis (Branch/Stick Overhead)

Description: Canopies are to be considered to be sloped overhangs, fixed to the building facade and unsupported by posts, providing shade and protection to windows and doorways. Canopies may extend into the City's right-of-way. Canopies shall be installed against the face of the building, beginning at a minimum of seven feet above the sidewalk surface, extending no higher than ten feet above the sidewalk's surface. Canopies must extend a minimum of four to six feet from the face of the building. All framing will be concealed, unless the materials are integral to the detail of the overall facade. Canopy fabric material to be flame retardant and U.V. resistant. Canopies will generally cover more than a single window or door, but may be dedicated to one opening in the facade. Canopy colors must come from the color palette in Section B8.

- Recommended - Materials include heavy canvas or similar "fabric", spanish tile, concrete tile, non-reflective copper. Fabric canopies shall be box type. Suspended canopies.
- Conditionally Acceptable - Standing seam, if compatible with roof type.
- Prohibited - Metal canopies, residential style construction and materials.



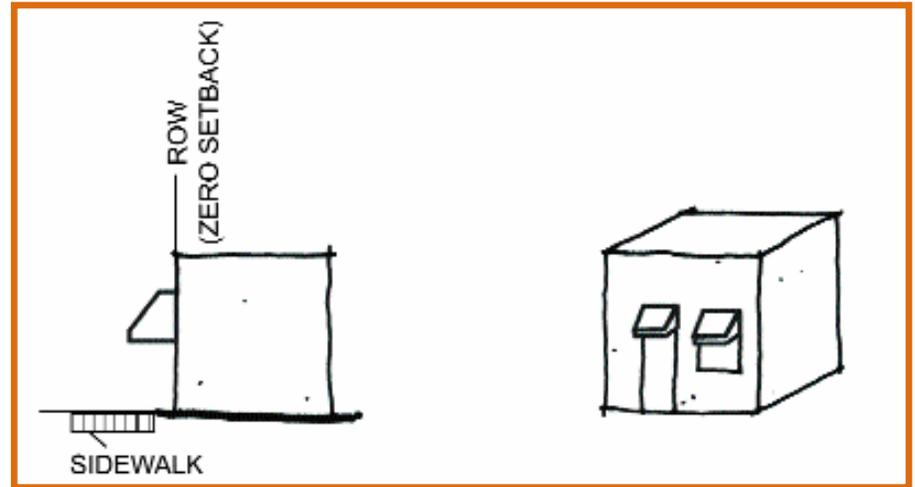
Canopy



Canopy

Description: Awnings are generally considered to be of a box design and installed over openings in the building facade. Such devices are suspended from the face of a building with no posts or ground-supports required. Materials include industry-standard awning fabric material, color to be from color palette. Awnings should not obscure architectural features or details. Awnings are similar to canopies, but will generally service only one window or door at a time. That is, one awning per window/door. Awnings may extend over the City's right-of-way. Awning colors must come from the color palette in Section B8.

- Recommended - Box types. All awnings must be of a consistent type on the building on each floor. If the building is located on a corner lot, consistent awnings must be applied to secondary street frontage, matching those of the primary facade.
- Conditionally Acceptable - Standing seam, if compatible with roof type. Doors and windows not treated with awnings on the same floor as doors and windows that are treated.
- Prohibited - Metal awnings, residential-style construction and materials.



Awning



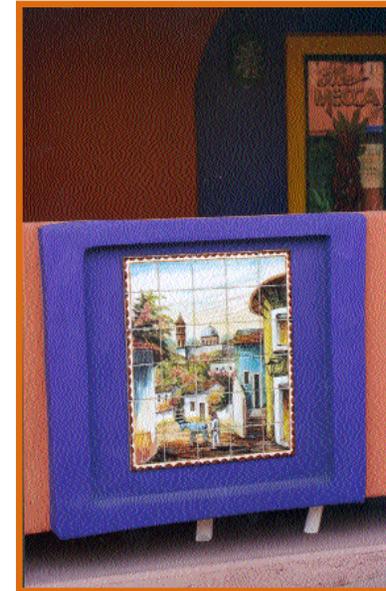
Awning

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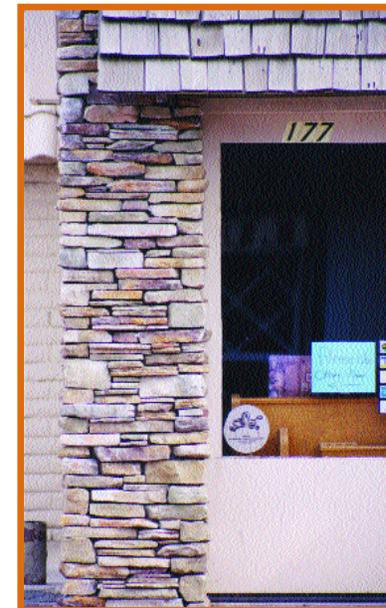
## B5. Architectural Detail

Description: Facade elements and details that support a unique building character. The location of architectural detail will likely be dictated by the overall style of the building; however, detail is encouraged at all doorways and around windows that front Western Avenue.

- Recommended - Nonreflective metal work. Ceramic tile and mosaics. Heavy wooden beams and lintels, proportional to facade. Stacked-stone. Roofing tiles. Stucco pop-out lintels. Parapet walls. Projected eaves with exposed rafters. Copings atop parapet walls. No facade surface shall have an area more than 24 feet in length along Western Avenue without an opening or articulation.
- Conditionally Acceptable - Glass block. Carved wooden beams. Stained glass. Slump or other decorative block. Brick. Precast architectural panels or small “rosettes.” Vigas, nichos. Other attached pre-made decorations.
- Prohibited - Intricate designs and patterns. Canales or exposed drainpipes or gutters.



Architectural Detail - Tile Mosaic



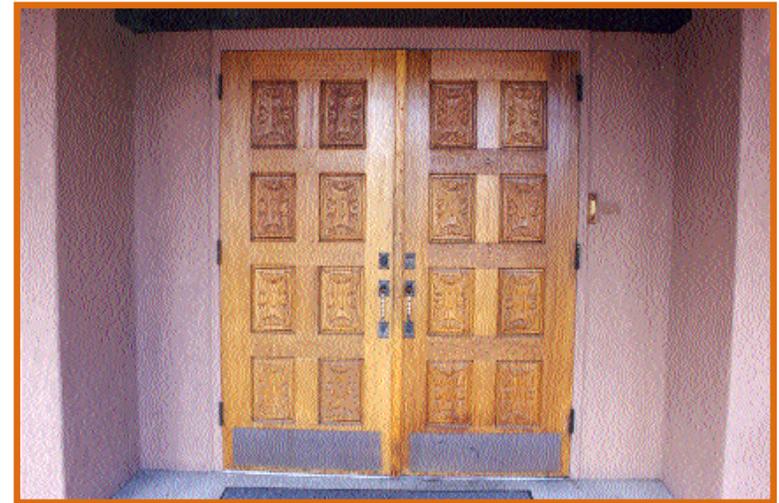
Architectural Detail - Stacked Stone

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## B6. Doors

Description: Those elements that control access to a structure.

- Recommended - Wood grain, “heavy” or otherwise depicting mass. Conspicuous hardware. Carved or otherwise implied detail. Glass doors with wooden or high quality non-aluminum metal frames. Half-glass doors.
- Conditionally Acceptable - Heavy, high-quality glass doors. Detailed metal security doors. Brass detail, including door pulls, kick-plates, and other door details.
- Prohibited - Plain, nondetailed security doors. Aluminum and glass retail-style doors. Plain, metal doors.



Heavy Wood Grain Doors



Glass Doors

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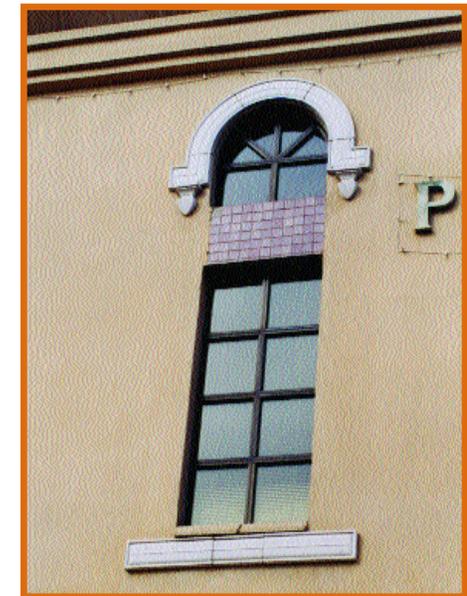
## B7. Windows (Storefront)

Description: Glass-covered openings, allowing view in and out of structure.

- Recommended - Large rectangular or square windows on ground floor to display merchandise. Non-reflective glass, allowing for clear view into building, or display area. Eighty-eight percent light transmission. Storefront windows should be a minimum of 18 inches above the ground plane and a maximum of 36 inches above the ground. Shape of windows needs to remain true to overall rhythm of the facade. If structure is greater than one story in height, upper story windows can be of a greater tint than that of street level windows. Windows with sills and visible frame, inset windows. Storefront aluminum window with nonreflective metal frame. Window jambs shall be no closer than 12 inches from the edges of building.
- Conditionally Acceptable - Arched windows. Security windows with inlaid wires allowed on side and rear windows. Small windows on ground floor.
- Prohibited - Security bars, mirrored glass, reflective glass materials. Bay windows.



Windows



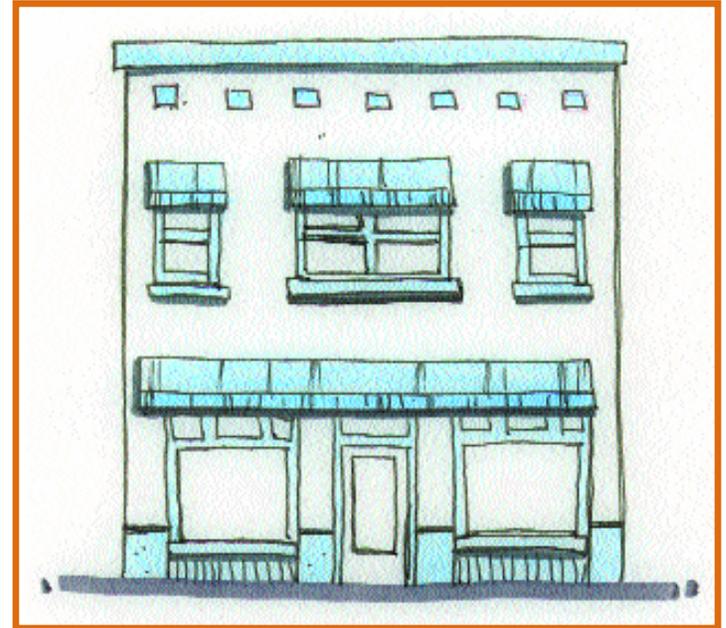
Windows

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## B8. Exterior Colors

Description: Shades, tones, and hues applied to structures or inherent in recommended materials.

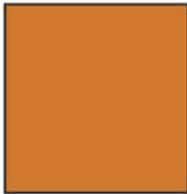
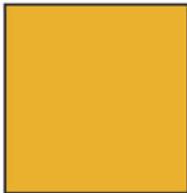
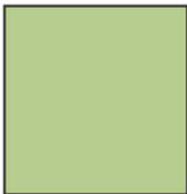
- Recommended - Exterior colors for facade and trim must be selected from the attached color range. One principal facade color and one contrasting trim color per building or storefront. A facade color shall make up a minimum of 80 percent of the exposed paintable surface. If building contains trim elements, trim paint should be used on trim areas only, excluding glass. Adjacent buildings should be painted differently, using complementary colors.
- Conditionally Acceptable - Slight variations from attached color range in facade or trim colors. Additional trim colors.
- Prohibited - Fluorescents, busy patterns, stripes, etc.



**Trim Identification**

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# AVONDALE COLOR RANGE

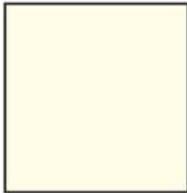
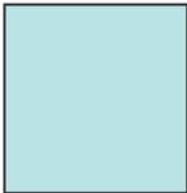
	BROWN 463 CVU		BLUE 548 CVU
	464 CVU		2915 CVU
	471 CVU		GREEN 5747 CVU
	131 CVU		5757 CVU
	TAN 468 CVU		5777 CVU

Please note, the color tones in this document are approximations, and are not for paint selection or color matching. For accurate color selections, please visit the city Planning Division.

Also, please recall that the Planning Division must review any exterior changes to an Old Town property before the change is implemented.

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# AVONDALE COLOR RANGE

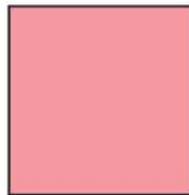
	WHITE WHITE		PURPLE 273 CVU
	7499 CVU		2597 CVU
	7500 CVU		248 CVU
	GRAY 421 CVU		TEAL 324 CVU
			326 CVU

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# AVONDALE COLOR RANGE



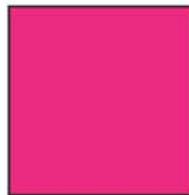
PINK  
183 CVU



184 CVU



227 CVU



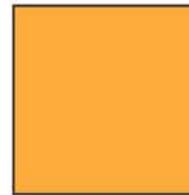
RUBINE RED CVU



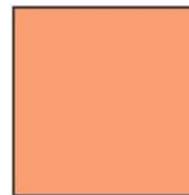
RED  
180 CVU



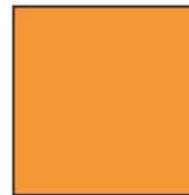
SALMON  
135 CVU



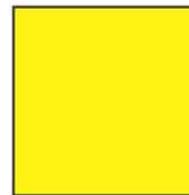
138 CVU



1645 CVU



152 CVU



YELLOW  
102 CVU

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## C. LANDSCAPE

Landscape covers requirements for in-ground landscape, planters, pots, walk, patio, or other surfacing, and site furniture. Landscape areas on private property should complement or enhance the existing streetscape in the City's right-of-way.

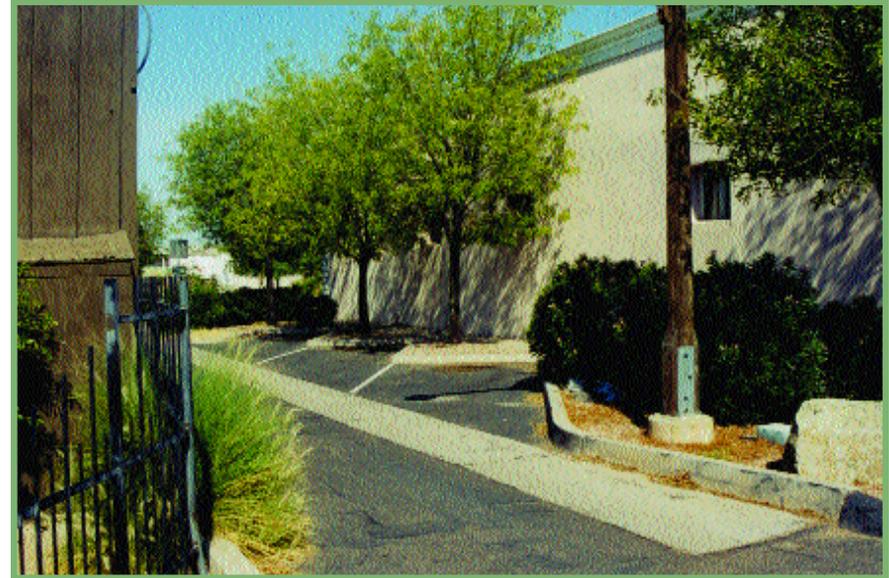
### Relationship to Zoning Ordinance Section 503.

Areas covered from the zoning ordinance include: General Requirements, Streetscape Standards, Parking Lot Landscaping, Ground Cover, Retention Basins, Maintenance, and Foundation Planting. See C1., below, for applicability of specific provisions.

### C1. General Requirements for In-ground Landscaping

Description: Location and type of landscaping, irrigation requirements.

- Recommended - Provisions of 503, A, B, C.1, D (except provision 503 D.4, shall apply only if a property does not contain an on-site rear parking lot with side street or alleyway access; a minimum of 10 percent of the parking lot area shall be landscaped, accenting pathway to back door entrance), E, F, G, and H (except where full-front build-out is achieved) are incorporated. Landscaping shall be compatible with landscaping in right-of-way.
- Conditionally Acceptable - If trees in adequate tree grates are desired rather than bed planting, the grate area shall be counted toward the 10 percent net land area that must be landscaped. Modifications to existing street frontage plantings. Existing trees or plants having a historical connection to the area not on the City's list of permitted plant species.
- Prohibited - Trees and shrubs that have spines, barbs, or thorns that protrude into pedestrian area. Plants that produce large amounts of debris, including fruits. Retention basins on Western Avenue, contouring of the ground along Western Avenue. New plants not on the list of the City's permitted species.



Landscaping at Parking Lot



Match Existing Landscape

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## C2. Planter Pots (Hanging)

Description: Includes hanging pots and window boxes. Also included: materials and means of suspension. Location must not encroach upon normal pedestrian routes, including head heights.

- Recommended - Colorful use of flowers and foliage, appropriate for the season and location. Terra cotta or similar-material pots; iron; ceramic; precast concrete in acceptable color (see color range, Section B8). Dried natural plants are acceptable (i.e., chilies, herb bundles).
- Conditionally Acceptable - Plastic pots that have ceramic or clay appearance.
- Prohibited - Artificial plant materials. Exposed aggregate pots. Plastic pots and boxes, other than those listed as conditionally acceptable.



Planter Pots

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### C3. Planter Pots (At Grade)

Description: Size, style, color, and placement of planter boxes or pots.

- Recommended - Concrete, carved stone, ceramic, or clay pots.  
Irrigated when possible. Detailed and of adequate size and scale.  
Location should not impede access, through travel, or emergency access to or around buildings or pedestrian corridors.
- Conditionally Acceptable - Wood.
- Prohibited - Pots smaller than 8 inches in diameter.



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## C4. Hardscape Elements

Description: Includes color, texture, and material selection for walkways, patios, and other ground plane enhancements.

- Recommended - Materials that do not impede wheelchair travel or access. Pavers. Colored concrete, in colors that complement the nearby structures. Concrete finishes: sandblast, light broom.
- Conditionally Acceptable - Tiles, stone, medium broom.
- Prohibited - Overly detailed concrete walks (stamps, patterns). Grade-changing overlays, painted concrete.



Colored Concrete



Pavers from Avondale Intersections

## C5. On-Site Furniture

Description: Elements including benches, tables, chairs, light poles, bollards, trash receptacles, etc., including the color and style of these elements.

- Recommended - These elements shall be of a design and character consistent with municipal streetscape elements.
- Conditionally Acceptable - Recycled plastic items.
- Prohibited - Plastic elements and features. Temporary use items.



Site Furniture - In the Right-of-Way



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## D. SIGNAGE

Signage for the downtown area should consist of three basic types of signage - Identification, Information, and Directional. Each establishment may want and/or need more than one of the three types. A business may in fact choose to include more than one style of sign for a specific business or property. That is, he/she may want to install a canopy sign (identification) in addition to a freestanding sign (directional) and a window-applied sign (information). It is not suggested that only one of the following sign types may be incorporated into a business, but rather that these are the most common types of signs, and that some compatibility does exist between types listed.

Identification signs are the primary signs for an establishment and should indicate the name of the establishment and possibly the nature of the business, only. Extensive lists of products or services should not be included, nor should phone numbers. The location of specific signs depends largely upon the type of sign and the building it is to be applied to, but typically, no sign should be located above second floor windows .

Information signs should give the user the basic information of entrance, hours of operation, possibly a phone number, and the type of services and/or products available within the establishment. They can also be interpreted as special manufacturers (i.e., Nike, FTD florist affiliations, clothing manufacturers, etc.) These signs should be secondary to any identification and be applied as such.

Directional signs direct the shopper/visitor to the appropriate entrance, parking area, driveway, etc. These are typically small, freestanding, permanent signs or portable signs.

Signs should be simple, well designed with the type of viewer in mind, and somewhat modest. They should add accent to the building, the streetscape, and surrounding property and take into consideration the adjacent landscape and streetscaping. Signs should not obscure architectural elements or details. Alignment of signs is important when buildings are directly adjacent to each other or when more than one establishment occupies the same building, thus insuring a cohesive appearance.

In the case of corner occupancy, one additional sign may be added to the cross street.



**Signage - Identification**

## D1. Sign Material

Description: Includes actual construction of sign, including texture and presentation.

- Recommended - Metals with patina or rusted finishes, Signfoam® high-density foam with quality painted finishes, painted metal.
- Conditionally Acceptable - Wood, routed or sandblasted panels, industry-standard plastics. Neon screened behind a panel, neon.
- Prohibited - Plastic signs, including plastic interior-illuminated signs, foam letters.

## D2. Sign Color and Text

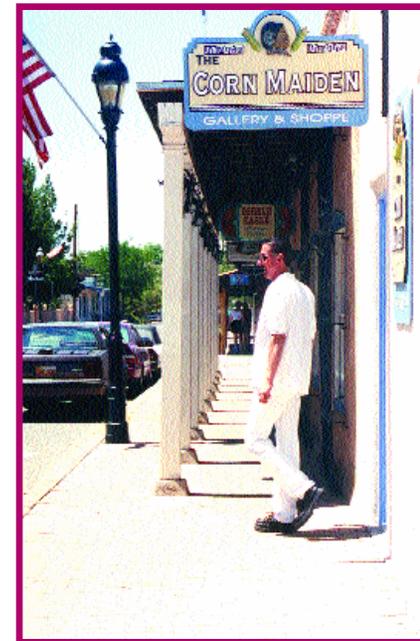
Description: Shade, hue, or tone as applied to a specific sign.

- Recommended - Distinctive design, easily readable fonts using material that accents the building architecture.
- Conditionally Acceptable - Marquees as applied to theaters and performance houses.
- Prohibited - Reflective or fluorescent colors, LED. Corporate sponsored signs, such as a soft drink sign advertising for “a restaurant.”

## D3. Architectural Compatibility

Description: The insurance that a specific sign, and its materials and overall character, correspond and complement the intended theme or image of a building or downtown area.

- Recommended - Reflect the character of the building and associated details.
- Conditionally Acceptable - None.
- Prohibited - Highly reflective materials.



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#### D4. Sign Lighting

- Recommended - Along the street fronts, gooseneck-type of down lights provide illumination as well as architectural detailing.
- Conditionally Acceptable - Halo backlit individual letters. Neon.
- Prohibited - Large box signs. Strong backlighting. Plastic faced interior-illuminated signs.



## D5. Signage Types:

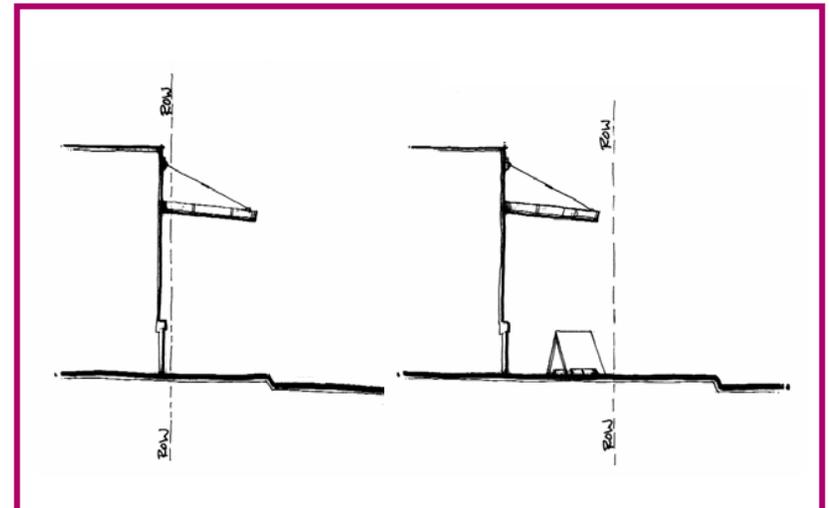
Acceptable signage types are Portable, Freestanding, Directories, Projecting, Awnings, Canopies, Window signs, Wall and Flush-mounted, and Banners.

Description- Portable - “A” frame sign or other portable, usually found in pedestrian area, while not impeding access. This sign should not be placed within the flow of pedestrian traffic.

- Recommended - “A” Frame - Wood, hinged sign generally occupying six square feet, and not more than three-feet tall. Other portable: wood or metal post, not taller than four-feet high. One sign of this type per business and displayed only during regular business hours. The placement of these signs shall allow for unobstructed travel around the sign and access around all sides. The location of these signs shall not be within 30 feet of street intersections, including accesses to alleys and service streets. The signs shall be of professional quality, use recommended colors and materials. Should be used on a temporary basis.
- Conditionally Acceptable - 3-D sculptural sign, not more than three-feet tall. Depth to be determined based on placement.
- Prohibited - Signs exceeding four-feet tall, impeding visual clearance past sign. Permanent, fixed signs. Locations in public right-of-way. Sign left out after business hours.



Portable “A” Frame and Freestanding Sign



“A” Frame/Freestanding Sign Placement

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Description - Freestanding - Identification for single tenants. Pole, monument, ground signs. Typically permanent type of installation. Use of substantial materials. Any type of monument sign will require design review and approval prior to fabrication. Freestanding signs will most likely be found at corner lots because of the space required for such signs. The maximum face size will be forty square feet.

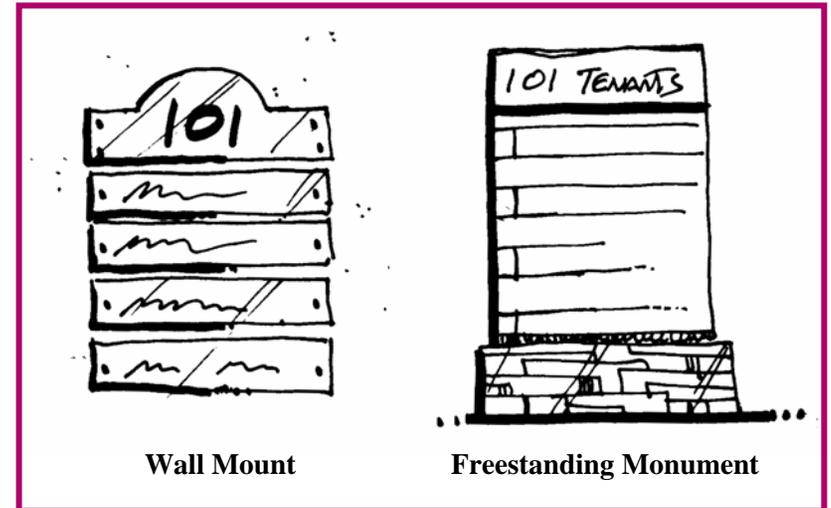
- Recommended - Use as an identification sign, or a directional sign. The height of any pole sign will not extend beyond parapet of building.
- Conditionally Acceptable - Use as an information sign.
- Prohibited - Impeding visibility at street corners or affecting general site circulation. Sign within the sight triangle.



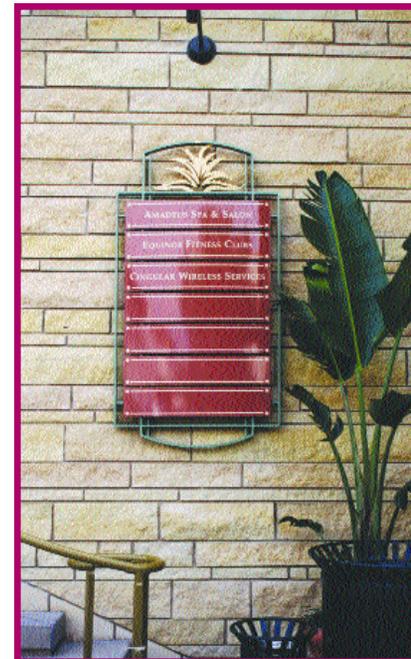
**Monument Sign**

Description - Directories - Sign that lists all tenants occupying a building, often incorporates removable placards. These can be either freestanding or wall-mounted.

- Recommended - Pedestrian-oriented, parallel to street.
- Conditionally Acceptable - Mounted on posts of overhead structure such as porch or trellis.
- Prohibited - Impeding visibility at street corners or affecting general site circulation. Sign within the sight triangle.



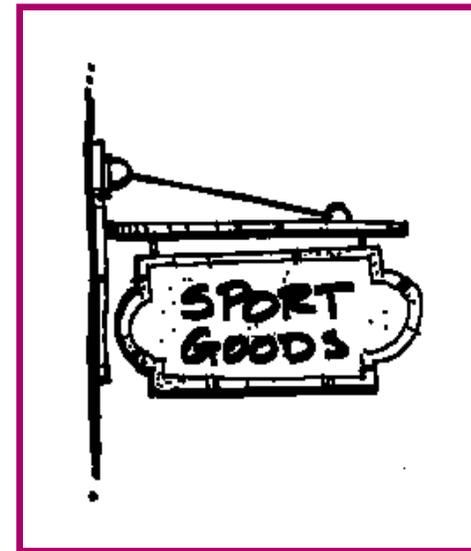
### Directories



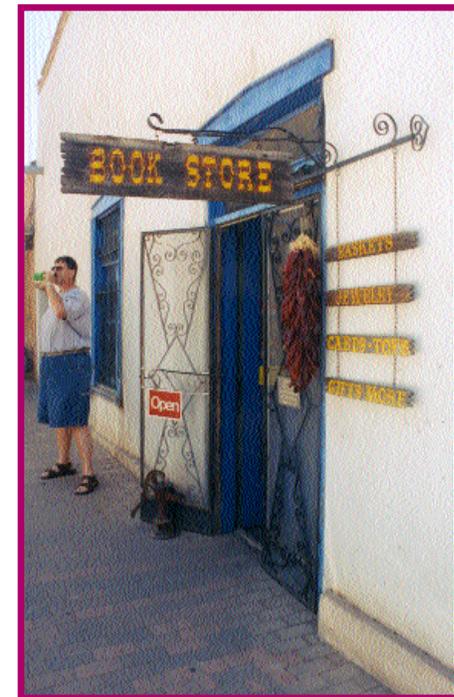
Directory

Description - Projecting - Sign that extends from the face of building or hangs from overhead canopy, thus allowing for increased visibility from approaching motorists and pedestrians. Usually mounted or suspended from a support. Also known as a flag- mounted sign. Usually are perpendicular to the street. This type of sign often adds to the interest and vitality of the streetscape.

- Recommended - Proportional to the building facade and building height above street level to which it is attached. Signs of this type should be placed no closer than 24 feet from each other, thus limiting visual clutter. Projecting signs must be unique and of hand painted or carved quality and appearance. Seven foot minimum clearance under sign. “Iconic” signs.
- Conditionally Acceptable - Signs hang parallel to street from building or canopy.
- Prohibited - Internally illuminated cabinet construction with plastic inserts and applied translucent graphics.



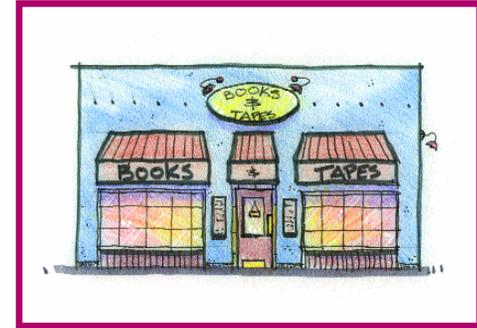
Projecting Sign



Projecting & Wall Mounted Signs

Description - Canopy and Awning Signage - Signs or text imprinted or attached onto new or existing canopies or awnings. Usually involves silk screening of graphics or text onto fabric, or applying individual letters onto fabricated structures. This type of application should be designed as secondary signage.

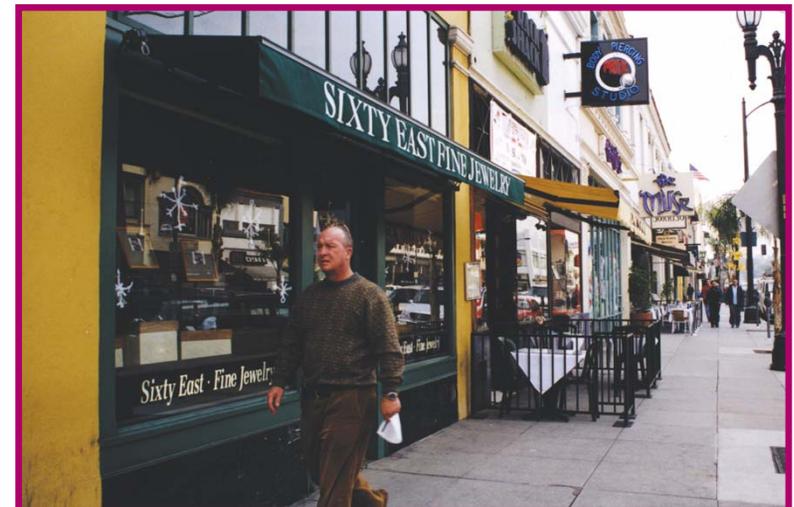
- Recommended - Text applied to the valance flap of fabric, or to the fascia of fabricated structures. One color, compatible with canopy or awning. Maximum 75 percent coverage of valance or fascia.
- Conditionally Acceptable - Text applied to shed portion. Text/graphics on side flaps.
- Prohibited - Internally illuminated flex material with translucent graphics.



Awning Signage

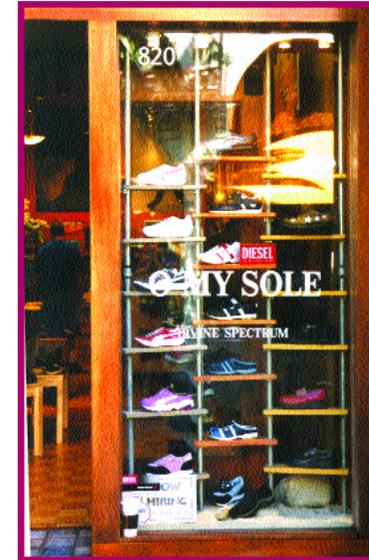


Canopy Signage

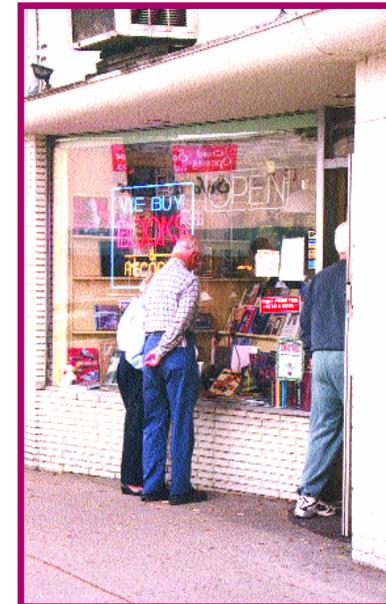


Description - Window Signs and Graphics - Text or graphics applied to or adjacent to a storefront window and immediately behind. Signage applied to windows should not occupy more than 25 percent of the surface of the window. The windows to receive such signage should be located at ground level, and front the primary access area. Sign text can consist of business name, nature of the business, tenant logo, phone number, and hours of operation. Any sign located within a building, closer than three feet to a window, will count towards the 25 percent maximum allowable surface of signage allowed.

- Recommended - Gold leafing or surface-applied paints or special markers. May also include etched glass or adhesive letters/graphics. Neon tubes.
- Conditionally Acceptable - A marketing strip on any side of the window is acceptable, provided it is one color, and one font size, and the total window signage does not exceed 25 percent of the window area. Bold fonts.
- Prohibited - Sale banners painted onto window glass. Graphics using reflective colors. Fluorescents.



Surface Applied



Neon

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Description - Wall/flush-mounted - Signs that are affixed permanently to the face of a building, canopy, or building fascia in a fashion in keeping with the overall established pattern of the facade. Graphic logos painted directly on the facade are included in this description. Compatibility with adjacent building signage must be addressed. Size of sign should be in proportion to facade. Property will be eligible for 1 square foot of flush-mounted sign per 1 linear foot of frontage on Western Avenue, or a minimum of 24 square feet of sign area, whichever is greater.

- Recommended - Individual letters and logos with dimensional quality or custom designed sign panels that incorporate letters and logos within unique shapes.
- Conditionally Acceptable - Halo backlit or illuminated signs. Graphic logos painted directly on facade must be of a professional, artistic caliber.
- Prohibited - Non-illuminated signs that protrude more than two inches from face of building. Text painted directly on wall. Box, cabinet signs.

Description - Banners - Temporary signage hung or displayed on the exterior of buildings or within display windows. A special-use permit will be required to date the signs, stating time limit between banner uses.

- Recommended - Signs that advertise for special events, sales, and festivals. To be removed immediately after event. Custom fabricated banners are encouraged, rather than “stock” items.
- Conditionally Acceptable - Stock, catalog items.
- Prohibited - Faded signs, signs showing effects of wind and general exposure to elements.



**Flush Mounted Sign**

## E. LIGHTING

Exterior lighting is to serve two distinct functions: to provide a light source for security reasons and to enhance architectural design and detail of the immediate building. Lighting shall not shine on or adversely impact adjacent properties or roadways.

### E1. Show window lighting, Entrance lighting, Exterior facade lighting, Overhead lighting, Landscape lighting, and Parking lot lighting.

Description: Show Window Lighting - Lighting that highlights products and goods provided by an establishment.

- Recommended - Gooseneck lights, lights on arms, interior lights.
- Conditionally Acceptable - Seasonal lighting, such as holiday lights, neon.
- Prohibited - Permanent bare bulb lights, light strips, flashing or strobe effect lights.

Description: Entrance lighting - Lighting dedicated to the primary entrance into a structure.

- Recommended - Gooseneck lights, lights on arms. Light levels at two footcandles on the ground or greater. Sconces, if under overhead structures. Recessed doorways must be lit at 1-foot candle minimum dawn to dusk.
- Conditionally Acceptable - Globes, lanterns. Neon.
- Prohibited - Bare bulb lights, flashing or strobe-effect lights, and chandeliers. Flood lights on Western Avenue.



Light on Arm



Exterior Facade Lighting

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Description: Exterior facade lighting and overhead lighting - Lighting designed to accentuate or otherwise highlight architectural features or provide security.

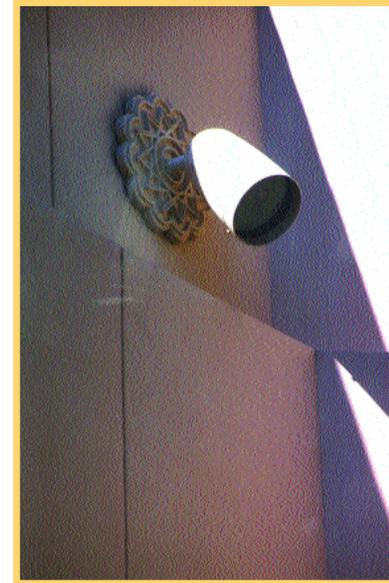
- Recommended - Wall mounted lights, lights on arms, uplights. Lights mounted on overhead structure posts. In-ground lights in landscaped areas.
- Conditionally Acceptable - Seasonal or holiday lighting. Neon.
- Prohibited - Freestanding pole lights, bare bulb lights, in-pavement lights, colored lens, or lights other than white. Flood lights on Western Avenue. Lights causing glare to pedestrians.

Description: Landscape lighting - Lighting within a landscape area, used predominately as accent lighting.

- Recommended - Bollards for pedestrian pathways, lights that comply with “dark-sky” standards. Light fixtures should be vandal resistant.
- Conditionally Acceptable - Seasonal lighting of landscape materials.
- Prohibited - Colored lens lights.

Description: Parking lot pole lighting. Lighting within a parking lot, with fixtures visible from Western Avenue.

- Recommended - Simple, nonelaborate fixtures. Black color. Maximum pole height: sixteen feet. Metal halide light source. Shielded fixtures. Foot candles: 1 fc. for entire parking lot.
- Conditionally Acceptable - Same fixture as street lights.
- Prohibited - Concrete bases or poles. Globes.



Exterior Facade Lighting



Entrance Lighting

---

## E2. Style/Scale

Description: The overall appearance of light fixtures and associated equipment. Scale of the light fixture/source.

- Recommended - Exterior lighting should be appropriate to the structure's architectural style. Indirect lighting is recommended. Scale of fixtures to be compatible with overall scale of building and details/accents. Style should match or be compatible with street fixture.
- Conditionally Acceptable - Other styles of lighting in areas not visible from Western Avenue. Small, pinpoint lights. Temporary "grand opening" lights.
- Prohibited - Neon tubing outlining display windows. Lights that pulsate, flash, or strobe. Oversized light fixtures or patterns.

## E3. Location

Description: The placement of fixtures/light sources.

- Recommended - Provide lighting at all building entrances. Provide lighting at all pedestrian and vehicular access points to parking facilities. Highlight architectural features, signs, entrances, and paths. Locate lighting to encourage nighttime activity, where applicable. Make all attempts to avoid glare.
- Conditionally Acceptable - Secondary entry lights.
- Prohibited - Placement of fixtures that impact travel within, through, and around the pedestrian area. Locations that produce glare effects.



Existing Street Light Style

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## F. PUBLIC ART

The installation of either permanent or temporary public art is encouraged throughout the project area. The introduction of art into the pedestrian environment is a means of creating identifiable nodes or spaces that visitors can use as benchmarks. Public art of a permanent nature is expected to withstand exposure to exterior elements without negatively affecting the overall integrity of the art itself. Permanent public art will be placed on a structurally sound “base” or fixed location. Temporary public art elements are not intended to withstand continued exterior exposure for long periods of time. These may also include traveling or revolving displays or exhibits. All public art, whether temporary or permanent, must be properly maintained at all times by the property owner, and pieces showing any signs of wear or deterioration must be immediately repaired or removed.

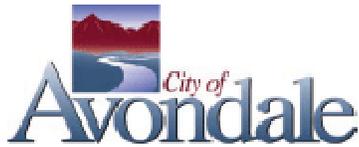
The process for an arts program will be established by the City at a later date.



**Carniceria Mural**



**Mural**



# CITY COUNCIL REPORT

**SUBJECT:**

Proposed Text Amendment - Zoning Ordinance Update (PL-12-0226)

**MEETING DATE:**

August 12, 2013

**TO:** Mayor and Council

**FROM:** Tracy Stevens, Acting Development & Engineering Services Director 623-333-4012

**THROUGH:** Charlie McClendon, City Manager

**PURPOSE:**

Staff will make a presentation to the City Council on the proposed amendments to the Zoning Ordinance. This item is for information and discussion only; the item is scheduled to return to the City Council in its final form by the end of the year. No action is required this evening.

**BACKGROUND:**

The Avondale Zoning Ordinance was adopted in 1990. Beginning in 2007, the Planning Division undertook the substantial task of analyzing the Zoning Ordinance and proposing text amendments that would create an Ordinance reflective of the current desires of the City's residents, business owners, and property owners. On April 7, 2008, the City Council adopted the first of these text amendments to Section 3, Commercial Districts. On April 18, 2011, the City Council adopted an Ordinance amending Section 1, Administration and Procedures, the last in the series of text amendments. In total, between April 2008 and April 2011, fourteen Zoning Ordinance Text Amendments were adopted by the City Council, revising nearly all Zoning Ordinance sections or creating new sections. A comprehensive Zoning Ordinance update was approved on December 5, 2011.

Soon after the Comprehensive Zoning Ordinance update, the General Plan 2030 was adopted resulting in a new vision for the City moving forward. The goals now emphasize the importance of revitalization, environmental and economic sustainability. To help the City achieve the goals set forth by the General Plan 2030, amendments to the Zoning Ordinance are being proposed. These proposed changes will ensure the Zoning Ordinance remains consistent and up-to-date with industry standards, and assist the City in redevelopment and developing a sustainable community.

**DISCUSSION:**

In addition to the amendments proposed and to further revitalization efforts, the addition of the Historic Avondale Infill Overlay District (HAIO) is proposed for Section 504 of the Zoning Ordinance. The Historic Avondale area boundaries are Lower Buckeye Road to the south, the Agua Fria River to the east, Van Buren Street to the north, and the City's irregular limit with Goodyear to the west. The purpose of the HAIO District is to promote and facilitate the development of vacant properties and redevelopment of underutilized and abandoned properties. This tool can be used as a method to address potentially incompatible development standards while providing flexibility for property owners and maintaining the historic character of the neighborhood. The HAIO district may be used when other tools available in the Zoning Ordinance will not work to address the development needs of the property. Site specific development standards and performance requirements are established at the time of the overlay zoning. It is the intent of this district to:

- Accommodate growth by encouraging and facilitating new development on vacant and underutilized land in areas that already have infrastructure, utilities, and public facilities;
- Provide flexibility in development standards to facilitate infill development and redevelopment;
- Encourage a design and development consistent with the historic character that is pedestrian oriented and artistic in nature.

All lots that meet the criteria of the HAIO District will have the ability to request relief from the standards set forth in the Zoning Ordinance. Lots that are two (2) acres or less may also request relief from the Historic Avondale Design and Development Guidelines, with the exception of the Architectural Section of the Guidelines. Lots over two (2) acres or more must adhere to the Historic Avondale Design and Development Guidelines. Applications will be processed in the same manner as other zoning changes subject to public notice and public hearing requirements set forth in Section 1 of the Zoning Ordinance. A reduction in fees is also being considered. A neighborhood meeting is scheduled for August 22, 2013 at the Sam Garcia Library to discuss this proposal further with the property owners and residents.

Other proposed changes to the Zoning Ordinance are as followed:

- Definitions added to Section One (1): antique or collectable store, mural, natural vegetative screen, revitalization area, and perimeter wall;
- Addition of a new zoning district, Suburban Residential-10 (R1-10);
- Removed the need for a Conditional Use Permit for places of worship within residential zoning districts and allowing the use as Permitted with Conditions;
- Included adult day care as a use permitted with a Conditional Use Permit within the C-O and C-1 commercial districts, along with changing the definition of adult day care to include adolescents, adults, and the elderly;
- Changed Cigar Bar, Tobacco Lounge, and Smoke Shop from Permitted to requiring a Conditional Use Permit within the C-2 and C-3 zoning districts and removed these uses from the Old Town Avondale Business District;
- Removed the requirement to underground overhead utility lines from Section Seven (7);
- Stated in Section 7 that all downspouts must be internalized;
- Included pre-schools in the Required Parking Schedule matrix;
- The following signs have been added to Section 912, Signs Authorized without Permits: lost pet signs, neighborhood and community event signs, signs for approved seasonal sales uses, and traffic directional signs;
- Changed the disbursement of special promotion temporary signage from ten (10) consecutive days no more than three (3) times a year with 30 days between each display to a maximum of thirty (30) days each calendar year;
- Now offering a City sponsored program for way-finding signage that directs visitors and residents to civic points of pride, City Center, Historic Avondale or other municipal buildings;
- Changed plant sizes, quantities, and locations along streets, medians, parking areas, and single and multi-family developments to provide better shade, lower reflected heat, and address maintenance issues;
- Clarified what is expected for preliminary and final landscape plans;
- Walls/fences are no longer required for single family or multi-family residential developments to create additional connectivity and promote walkability throughout the community.

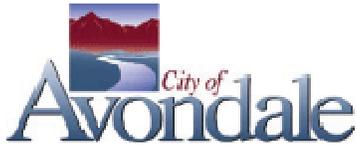
#### **RECOMMENDATION:**

No formal action is required. Staff requests City Council provide feedback and direction on the proposed amendments to the Avondale Zoning Ordinance.

#### **ATTACHMENTS:**

[Click to download](#)

No Attachments Available



# CITY COUNCIL AGENDA

CITY COUNCIL CHAMBERS . 11465 WEST CIVIC CENTER DRIVE . AVONDALE, AZ 85323

REGULAR MEETING  
August 12, 2013  
7:00 PM

**CALL TO ORDER BY MAYOR ROGERS  
PLEDGE OF ALLEGIANCE  
MOMENT OF REFLECTION**

**1 ROLL CALL AND STATEMENT OF PARTICIPATION BY THE CITY CLERK**

**2 SCHEDULED PUBLIC APPEARANCES**

a. **Banner Estrella Medical Center Expansion**

**3 UNSCHEDULED PUBLIC APPEARANCES**

(Limit three minutes per person. Please state your name.)

**4 CONSENT AGENDA**

Items on the consent agenda are of a routine nature or have been previously studied by the City Council at a work session. They are intended to be acted upon in one motion. Council members may pull items from consent if they would like them considered separately.

a. **APPROVAL OF MINUTES**

1. Special Meeting of July 15, 2013
2. Regular Meeting of July 15, 2013

b. **CDBG REPAYMENT AUTHORIZATION**

City Council will consider a request to (i) authorize an amount not to exceed \$220,338 for the repayment of federal funds awarded under the CDBG grant, (ii) ratify an expenditure of \$107,438 for partial payment, (iii) authorize the transfer of up to \$220,338 from the contingency fund and (iv) authorize staff to execute all the necessary documents. The Council will take appropriate action.

c. **SALE AND PURCHASE AGREEMENT - LBCMT 2007-C3 OFFICE 125, LLC**

City Council will consider a request to approve a Sale and Purchase Agreement with LBCMT 2007-C3 Office 125, LLC for the acquisition of a property located at 125 S. Avondale Boulevard in the amount of \$2,775,000, authorize the use and transfer of contingency funds and authorize the Mayor or City Manager and City Clerk to execute all the necessary documents. The Council will take appropriate action.

d. **FINAL PLAT – HILL TRACT ESTATES REPLAT (PL-13-0003)**

City Council will consider a request to approve a replat of the Hill Tract Estates subdivision to reconfigure three existing parcels into six new parcels, dedicate right-of-way for Hill Drive, 3rd Drive, and 4th Drive, and dedicate easements for drainage, utilities, and access related to the City's Legacy Avondale housing development and authorize the Mayor or City Manager and City Clerk to execute all the necessary documents. The Council will take appropriate action.

e. **ORDINANCE 1523-813 - AUTHORIZING THE SALE OF LEGACY AVONDALE HOMES**

City Council will consider an Ordinance authorizing the City Manager to accept offers on the Legacy Avondale properties consisting of a total of six new homes on the 300 block of Hill Drive and authorize the Mayor or City Manager and City Clerk to execute all the necessary documents. The Council will take appropriate action.

f. **ORDINANCE 1522-813 - DEDICATION OF DRAINAGE EASEMENT TO ELLIOT HOMES, INC.**

City Council will consider an ordinance dedicating a drainage easement to Elliot Homes, Inc. (future conveyance to the Avalon Estates HOA) to accommodate the conveyance of off-site historical flows, and authorize the Mayor or City Manager, and City Clerk to execute the necessary documents. The Council will take appropriate action.

5 **PUBLIC HEARING - FREEWAY CORRIDOR SPECIFIC PLAN UPDATE (PL-11-0080)**

City Council will hold a public hearing related to the City-initiated amendment to the Freeway Corridor Specific Plan and continue the item to the September 16, 2013 City Council Meeting. The continuance is necessary to allow the Planning Commission at their request to continue the review of the application at the August 15, 2013 Planning Commission Meeting.

6 **PUBLIC HEARING - RESOLUTION 3129-813 - CENTURYLINK CABLE LICENSE APPLICATION AND WAIVER REQUESTS**

City Council will consider a resolution approving Qwest Broadband Services, Inc. dba CenturyLink's cable license application, including their waiver requests. The Council will take appropriate action .

7 **ADJOURNMENT**

Respectfully submitted,



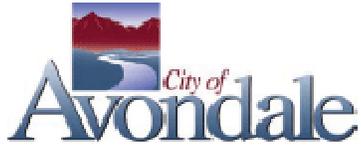
Carmen Martinez  
City Clerk

Individuals with special accessibility needs, including sight or hearing impaired, large print, or interpreter, should contact the City Clerk at 623-333-1200 or TDD 623-333-0010 at least two business days prior to the Council Meeting.

Personas con necesidades especiales de accesibilidad, incluyendo personas con impedimentos de vista u oído, o con necesidad de impresión grande o interprete, deben comunicarse con la Secretaria de la Ciudad at 623-333-1200 o TDD 623-333-0010 cuando menos dos días hábiles antes de la junta del Concejo.

Notice is hereby given that pursuant to A.R.S. § 1-602.A.9, subject to certain specified statutory exceptions, parents have a right to consent before the State or any of its political subdivisions make a video or audio recording of a minor child. Meetings of the City Council may be audio and/or video recorded and, as a result, proceedings in which children are present may be subject to such recording. Parents, in order to exercise their rights may either file written consent with the City Clerk to such recording, or take personal action to ensure that their child or children are not present when a recording may be made. If a child is present at the time a recording is made, the City will assume that the rights afforded parents pursuant to A.R.S. § 1-602.A.9 have been waived.

De acuerdo con la ley A.R.S. § 1-602.A.9, y sujeto a ciertas excepciones legales, se da aviso que los padres tienen derecho a dar su consentimiento antes de que el Estado o cualquier otra entidad política haga grabaciones de video o audio de un menor de edad. Las juntas del Concejo de la Ciudad pueden ser grabadas y por consecuencia, existe la posibilidad de que si hay menores de edad presentes éstos aparezcan en estos videos o grabaciones de audio. Los padres puedan ejercitar su derecho si presentan su consentimiento por escrito a la Secretaria de la Ciudad, o pueden asegurarse que los niños no estén presentes durante la grabación de la junta. Si hay algún menor de edad presente durante la grabación, la Ciudad dará por entendido que los padres han renunciado sus derechos de acuerdo a la ley contenida A.R.S. § 1-602.A.9.



# CITY COUNCIL REPORT

**SUBJECT:**

Banner Estrella Medical Center Expansion

**MEETING DATE:**

August 12, 2013

**TO:** Mayor and Council

**FROM:** Carmen Martinez, City Clerk (623) 333-1214

**THROUGH:** Charlie McClendon, City Manager

**PURPOSE:**

Deb Krmpotic, CEO of Banner Estrella Medical Center will address the Council to inform them regarding the expansion of their campus located at 9201 W. Thomas Road in Phoenix.

**ATTACHMENTS:**

Click to download

[Request](#)

## **Carmen Martinez**

---

**Subject:** FW: Information-only presentation to Avondale City Council on Banner Estrella Medical Center expansion

**From:** Nelson, Jeff

**Sent:** Monday, June 10, 2013 3:18 PM

**To:** 'EmailCityClerks@avondale.org'

**Subject:** Information-only presentation to Avondale City Council on Banner Estrella Medical Center expansion

Ms. Martinez,

Banner Health would appreciate the opportunity to come present to Council for approximately 30 minutes on the major expansion project taking place at nearby Banner Estrella Medical Center (20-minute presentation plus 10 mins or so for questions). The presenter would be Deb Krmptotic, CEO of Banner Estrella Medical Center, located at 9201 W. Thomas Road, in Phoenix. We'd like to use this presentation as an opportunity to:

- Describe the current expansion taking place on the medical campus near Avondale.
- Present some renderings via a PowerPoint presentation that show what the finished project will look like
- Answer any questions about the project that council or city staff may have

We would be available to present at council's Monday, July 15 meeting. If that doesn't work, we have availability on Monday, Aug. 12, as well.

Please let me know if either of these dates work for you and, if so, what the next steps are to arrange the presentation.

Thank you!

Jeff Nelson

Director, Public Relations, Banner Health Arizona West Region

Phone: 602-865-5771

*Banner Health . . . we exist to make a difference in people's lives through excellent patient care*



# CITY COUNCIL REPORT

**SUBJECT:**  
APPROVAL OF MINUTES

**MEETING DATE:**  
August 12, 2013

**TO:** Mayor and Council  
**FROM:** Carmen Martinez, City Clerk (623) 333-1214  
**THROUGH:** Charlie McClendon, City Manager

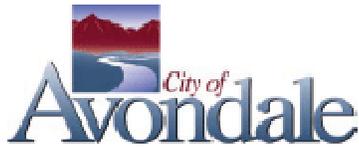
**PURPOSE:**

1. Special Meeting of July 15, 2013
2. Regular Meeting of July 15, 2013

**ATTACHMENTS:**

[Click to download](#)

No Attachments Available



# CITY COUNCIL REPORT

**SUBJECT:**  
CDBG Repayment Authorization

**MEETING DATE:**  
August 12, 2013

**TO:** Mayor and Council  
**FROM:** Kevin Artz, Budget & Finance Director 623-333-2011  
**THROUGH:** Charlie McClendon, City Manager

**PURPOSE:**

Council will consider (i) authorizing an expenditure of an amount not to exceed \$220,338 for the repayment of federal funds awarded under the CDBG grant, including ratifying a prior expenditure of \$107,438 for partial payment, and (ii) authorizing the transfer of up to \$220,338 from the contingency fund.

**BACKGROUND:**

In fiscal year 2011, a Federal audit identified a subrecipient, under the City's Neighborhood Stabilization Program 1, which may have charged the Program unsupported or ineligible costs totaling \$787,004, while under contract with the City. The City has worked with the federal agency in an effort to resolve the questioned costs since the finding was identified.

In April 2013, a representative from U.S. Department of Housing and Urban Development (HUD) provided the City a repayment range of \$179,804 to \$220,338 to resolve the audit findings. HUD has identified four Recommendations for repayment. Two of the Recommendations (1A and 1D) have been finalized in the amount of \$107,438. Recommendations 1B and 1C have not been finalized and have a repayment range of \$72,366 to \$112,900.

In June 2013, the City submitted a recapture proposal (see attachment A) to HUD agreeing to transfer \$107,438 of local funds for the repayment of Recommendations 1A and 1D, by July 30, 2013. The funds would be reauthorized by HUD as grant funds to be used toward a future redevelopment project eligible under the Neighborhood Stabilization Program 1. HUD subsequently approved the proposal, and the City wired the payment of \$107,438 to HUD prior to the deadline.

**DISCUSSION:**

The City and HUD have identified a plan to resolve the Federal audit finding and questioned cost of \$787,004 from the 2011 audit. The plan provides that the City will repay the Federal Government up to \$220,338. However, HUD has then agreed to increase the City's grant by the repayment amount, and allow the City to recapture the funds. As a result, the City will eliminate an obligation under the questioned costs and recapture the funds to complete another eligible project in Avondale.

The recaptured funds will be used to offset the costs of acquiring the property at 305 E. Hill Drive and 309 E. Hill Drive (approved by Council with Ordinance 1519-613 on June 17, 2013).

The City has paid a portion of the settlement, in the amount of \$107,438, and the balance of the settlement (up to \$112,900) will be paid once the final amount has been identified.

**BUDGETARY IMPACT:**

As the repayment to HUD was not contemplated in the Annual Budget, staff is requesting a contingency transfer to the Neighborhood and Family Services Department, up to the amount of the final repayment, not to exceed \$220,338.

**RECOMMENDATION:**

Staff recommends that Council (i) authorize an amount not to exceed \$220,338 for the repayment of federal funds awarded under the CDBG grant, (ii) ratify an expenditure of \$107,438 for partial payment, (iii) authorize the transfer of up to \$220,338 from the contingency fund and (iv) authorize staff to execute all the necessary documents.

**ATTACHMENTS:**

Click to download

[Recapture proposal](#)



# City of Avondale

Neighborhood and Family Services  
1007 South 3<sup>rd</sup> Street  
Avondale, AZ 85323-1999  
Phone: (623) 333-2700  
Fax: (623) 333-0270  
TDD: (623) 333-0010  
Website: [www.avondale.org](http://www.avondale.org)

June 13, 2013

Lou Kislin, CPD Program Manager  
U.S. Department of Housing and Urban Development (HUD)  
One North Central Avenue, Suite 600  
Phoenix, AZ 85004

Dear Lou:

Thank you for your efforts to work with the City of Avondale on resolving the findings of the Office of the Inspector General Audit of our Neighborhood Stabilization Program subcontractor Housing our Communities. We respectfully request that the following proposal be considered for the recapture of NSP1 funds required under Recommendations 1A -- \$72,852 and 1D -- \$34,586.

- Avondale will transfer funds from a non-Federal source in the amount of \$107,438 to HUD via electronic funds transfer no later than July 30, 2013.
- Funds would be used toward a redevelopment project eligible under NSP1.
- Activities would include land acquisition, demolition and relocation.
- Drawdown would be completed no later than 24 months from the date of HUD plan approval.

The City believes these funds can be used most effectively and efficiently on an expansion of an NSP-1 and NSP-3 funded project currently underway. The Legacy Avondale project involved the acquisition and demolition of four bank-owned, small-scale multi-family housing projects located in one of the City's low-income areas under NSP-1. The City of Avondale is in the process of constructing six new homes on the land using NSP-3 funds. Construction of the first four units is scheduled for completion this summer.

The City would establish a second phase of the Legacy Avondale development using the recaptured funds for acquisition, demolition, and relocation costs, along with outside contributions to perform home construction. The new homes would provide high-quality, energy efficient, affordable homeownership opportunities and add to the ongoing revitalization of an underserved neighborhood. Given the lack of foreclosed homes for sale in Avondale, we see this plan as a realistic extension of our successful NSP activities in the Avondale community.

Thank you for your consideration. We are happy to answer any questions on this proposal and look forward to a swift resolution to this matter.

Sincerely,

Gina Ramos Montes  
Neighborhood & Family Services Director



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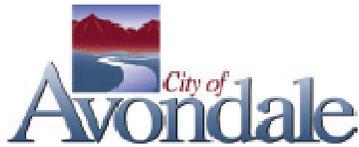
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Sincerely,

Gina Ramos Montes  
Neighborhood & Family Services Director



# CITY COUNCIL REPORT

**SUBJECT:**

Sale and Purchase Agreement - LBCMT 2007-C3  
Office 125, LLC

**MEETING DATE:**

August 12, 2013

**TO:** Mayor and Council

**FROM:** Daniel Davis, Economic Development Director 623-333-1411

**THROUGH:** Charlie McClendon, City Manager

**PURPOSE:**

Staff is requesting that the City Council approve a Purchase and Sale Agreement for the acquisition of property located at 125 S. Avondale Boulevard in the amount of \$2,775,000 and authorize the use and transfer of contingency funds.

**DISCUSSION:**

In the spring of 2012, the staff became aware that the property located at 125 S. Avondale Boulevard had fallen into foreclosure. The 2-story office building, known as Avondale Corporate Center is approximately 31,028 SF constructed in 2004. The Avondale Corporate Center is the corporate headquarters for Phoenix International Raceway.

On July 16, 2012 Council approved an ordinance authorizing participation in the public auction process for the acquisition of the property. During the past year the staff monitored the foreclosure proceedings and stayed in communication with the asset manager, LNR Partners, LLC. The asset manager hired Voit Real Estate Services to market the property, and increase tenant occupancy in an effort to maximize the value of the property. Voit was able to lease approximately 3,265 SF of office space to University Medical Sciences of Arizona. They recently completed their tenant improvements and are in the process of starting their business operations.

LNR Partners, LLC recently started the process to sell the property. The staff representing the City of Avondale were able to negotiate a purchase price of \$2,775,000. Upon execution of the purchase and sale agreement, staff will start a twenty one (21) day feasibility period to complete the necessary due diligence to include the environmental assessment, ALTA survey, and Title background review. The City will provide \$138,750 earnest money as a deposit that will be applied to the purchase price at the time of closing. Following the feasibility period, the City will have ten (10) days to close the transaction.

At the time of closing, the City will assume the two (2) tenant leases with Phoenix International Raceway (PIR) and University Medical Sciences of Arizona. Staff has discussed a lease amendment with PIR that would extend the term of their current agreement. Staff anticipates a lease amendment will be presented to Council in September. The balance of the leasable space is approximately 12,233 SF. Staff, working with our real estate colleagues around the valley, will market and lease the remainder of the space as soon as possible. The cash flow generated from lease revenue is anticipated to cover the repayment of the capital outlay for the purchase and the annual operating cost.

The estimated annual operating expenses for the property are approximately \$240,000, or \$20,000 per month. Our Finance Department will establish a separate account for the receivables and

payables for the property. All of the current service contracts for the property will terminate at the time of closing. Staff will coordinate with the City's existing landscape and custodial firms to provide the required services.

Staff will also explore the benefits of contracting a property management company to administer the daily management duties for the property. This cost would be included in the annual operating expenses of the property and shared by the tenants through their respective leases.

The acquisition of the property provides future expansion options for city facilities. The acquisition cost of \$2,775,000 is equivalent to approximately \$89 per square foot. If the City were to acquire property, design and construct a similar size building today, our cost per square foot would easily be in excess of \$150 per square foot.

**BUDGETARY IMPACT:**

The purchase of the property will require the transfer and use of \$3,000,000 of contingency funds for the purchase and annual operating expenses for the property through the end of the FY 2013-14.

**RECOMMENDATION:**

Staff recommends that City Council approve a Sale and Purchase Agreement with LBCMT 2007-C3 Office 125, LLC for the acquisition of a property located at 125 S. Avondale Boulevard in the amount of \$2,775,000, authorize the use and transfer of contingency funds and authorize the Mayor or City Manager and City Clerk to execute all the necessary documents.

**ATTACHMENTS:**

Click to download

[Sale and Purchase Agreement](#)

**AGREEMENT FOR SALE AND PURCHASE OF PROPERTY**

(Commercial Property)

SELLER: LBCMT 2007-C3 OFFICE 125, LLC

BUYER: THE CITY OF AVONDALE

EXECUTION DATE: AUGUST \_\_\_, 2013

PROPERTY: AVONDALE CORPORATE CENTER  
125 SOUTH AVONDALE BOULEVARD  
AVONDALE, AZ 85323

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EXHIBITS

- A LEGAL DESCRIPTION
- B TERMINATION ACKNOWLEDGMENT AGREEMENT
- C DEED
- D AFFIDAVIT
- E BILL OF SALE
- F ASSIGNMENT AND ASSUMPTION AGREEMENT
- G NOTICE TO TENANT
- H [INTENTIONALLY OMITTED]
- I CERTIFICATE OF NON-FOREIGN STATUS
- J [INTENTIONALLY OMITTED]

MIAMI 3772982.6 72496/43129

EXECUTION COPY

## AGREEMENT FOR SALE AND PURCHASE OF PROPERTY

**LBCMT 2007-C3 OFFICE 125, LLC**, an Arizona limited liability company ("**Seller**"), whose address is c/o LNR Partners, LLC, 1601 Washington Avenue, Suite 700, Miami Beach, Florida 33139, and **THE CITY OF AVONDALE**, an Arizona municipal corporation ("**Buyer**"), whose address is 11465 W. Civic Center Drive, Suite 210, Avondale, AZ 85323, hereby agree on this \_\_\_ day of August, 2013 that Seller shall sell to Buyer and Buyer shall purchase from Seller, upon the following terms and conditions and for the price herein set forth, the Property, as such term is defined in Article I of this Agreement.

### ARTICLE I

#### DEFINED TERMS

1.1 Deal Specific Definitions. As used herein, the following terms shall have the following meanings:

(a) "**Buyer Attorney Information**": Gust Rosenfeld P.L.C., One East Washington Street, Suite 1600, Phoenix, AZ 85004-2553, Attention: Andrew McGuire, Esq., Telephone Number: (602) 257-7664, Facsimile Number: (602) 340-1538, E-mail Address: [amcguire@gustlaw.com](mailto:amcguire@gustlaw.com).

(b) "**Buyer Notice Information**": Buyer at the address set forth in the opening paragraph, Attention: Charles McClendon, City Manager, Telephone Number: (623) 333-1015, Facsimile Number: (623) 333-0100, E-mail Address: [cmccclendon@avondale.org](mailto:cmccclendon@avondale.org).

(c) "**Closing Date**": 2:00 p.m. Eastern time on the date seven (7) days after the Feasibility Date.

(d) "**County**": Maricopa County located in the State.

(e) "**Deposit**": The amount from time to time delivered and/or held by the Escrow Agent as Buyer's earnest money deposit. The Deposit shall be the sum of U.S. \$138,750.00. A portion of the Deposit equal to \$100.00 shall be retained by Seller as independent contract consideration for Buyer's rights hereunder (the "**Independent Consideration**") in the event of any termination of this Agreement in accordance with the terms hereof. The Deposit shall be increased to the extent that interest accrues thereon.

(f) "**Disclosed Brokers**": Voit Real Estate Services, 2375 E. Camelback Road, Suite 150, Phoenix, AZ 85016 ("**Listing Broker**"), Attention: Darren Tappen, Telephone Number: (602) 791-1155, E-mail Address: [dtappen@voitco.com](mailto:dtappen@voitco.com) and Hogan Group, LLC, 7114 E. Stetson Drive, Suite 400, Scottsdale, AZ 85251 ("**Buyer's Broker**"), Attention: Matthews A. Lyons, P.L.L.C., Telephone Number: (602) 553-4128, E-mail Address: [mlyons@hogangroupaz.com](mailto:mlyons@hogangroupaz.com).

(g) **"Feasibility Date"**: 2:00 p.m. Phoenix, Arizona time on the date twenty-one (21) days after the Execution Date.

(h) **[INTENTIONALLY OMITTED]**

(i) **"Purchase Price"**: Two Million Seven Hundred Seventy Five Thousand and No/100 U.S. Dollars (\$2,775,000.00).

(j) **"State"**: Arizona.

1.2 General Definitions. As used herein, the following terms shall have the following meanings:

(a) **"Agreement"**: This Agreement for Sale and Purchase of Property executed by both Seller and Buyer.

(b) **[INTENTIONALLY OMITTED]**

(c) **"Business Day"**: Any day, other than a Saturday, Sunday or legal holiday, on which business is conducted by national banking institutions in Miami-Dade County, Florida and Maricopa County, Arizona and in the State.

(d) **"Buyer's Due Diligence Reports"**: All reports, documents, studies, analyses, and other written information obtained by Buyer with respect to the Property, including results of physical inspections, engineering studies, engineering drawings and specifications, surveys, Hazardous Materials Reports, soil tests, site plans, feasibility studies, market studies, architectural plans, specifications and drawings, title reports, permits, approvals and authorizations (whether obtained from governmental authorities or third parties); and all other work product (excluding attorney client privileged materials, internal memoranda, and appraisals) generated by or for Buyer in connection with the Property.

(e) **"Claims"**: Any and all claims, demands, causes of action, whether administrative or judicial, losses, costs (including any and all reasonable attorneys' fees, court costs, and reasonable costs of investigation, litigation, and settlement), expenses, sanctions, orders, curtailments, interest, liabilities, penalties, fines, expenses, liens, judgments, compensation, fees, loss of profits, injuries, death, response costs, and/or damages, of any kind whatsoever, whether direct or indirect, known or unknown, fixed or contingent, joint or several, criminal or civil, or in law or in equity.

(f) **"Closing"**: The execution and delivery of the Deed, the Bill of Sale and the other documents to be executed by Seller and/or Buyer regarding the Property and the payment by Buyer to Seller of the Purchase Price.

(g) **[INTENTIONALLY OMITTED]**

(h) **"Deed"**: The Special Warranty Deed conveying fee title to the Real Property to Buyer, duly executed by Seller and acknowledged and in proper form for recordation.

(i) **"Escrow Agent"**: Ultra Escrow Incorporated at its office located at 14351 Myford Road, Suite H, Tustin, California 92780, Contact Person: Cendy Dzandzara, Escrow Officer, Telephone Number: 714-368-1610, Facsimile Number: 711-388-3929, Email Address: [cendy@ultra-escrow.com](mailto:cendy@ultra-escrow.com).

(j) **"Event"**: Any fire or other casualty affecting the Property or any actual or threatened (to the extent that Seller has current actual knowledge thereof) taking or condemnation of all or any portion of the Property.

(k) **"Execution Date"**: The date set forth in the first paragraph of this Agreement, which date shall be the date Buyer and Seller have both executed this Agreement and Buyer or Buyer's attorney receives a copy of the fully executed signature page of this Agreement by facsimile or email.

(l) **"General Intangibles"**: Any and all guaranties, warranties, telephone exchange numbers, architectural or engineering plans and specifications, and development rights that relate to the Real Property or the Personal Property, if any, but excluding any Claims or other rights to payment and/or pending or anticipated actions of Seller or any other Seller Group party (i) against any former tenants (and/or guarantors of the leases entered into by such tenants) at the Property and from and/or against any former owners of the Property and/or any former borrowers or guarantors under, arising from or related to any loan held by Seller and/or any other Seller Group party; and (ii) against any insurer or any other party in connection with or relating to any Pre-Existing Insurance Claims or any Proceeds from Pre-Existing Insurance Claims.

(m) **"Hazardous Materials"**: Any toxic, radioactive, caustic or otherwise hazardous substance, including petroleum, its derivatives, by-products and other hydrocarbons, or any substance having any constituent elements displaying any of the foregoing characteristics. The term **"Hazardous Materials"** includes, without limitation, any substance regulated under any and all federal, state and local statutes, laws (including case law), regulations, ordinances, rules, judgments, orders, decrees, codes, plans, injunctions, permits, concessions, grants, franchises, licenses, agreements and other governmental restrictions, whether now or hereafter in effect, relating to human health, the environment or to emissions, discharges or releases of pollutants, contaminants, toxic substances, hazardous substances or wastes into the environment including, without limitation, ambient air, surface water, ground water, or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants, hazardous materials or wastes or the clean-up or other remediation thereof.

(n) **"Hazardous Materials Reports"**: Any and all studies, reports, analyses, information, or other written records regarding the presence or absence of Hazardous Materials at, on, in, under or relating to the Land.

(o) **"Intangible Property"**: The Leases and, to the extent the same is transferable by Seller, the Permits, the General Intangibles and any and all rights to the name of the improvements upon the Real Property.

(p) **"Land"**: The parcel of real property located in the County and State, as more particularly described on the attached **Exhibit A**. If the legal description is not complete or is inaccurate, this Agreement shall not be invalid provided the identity of the Property can otherwise be determined from this Agreement, in which event the legal description shall be completed or corrected after the Execution Date to meet legal requirements.

(q) **"Leases"**: Any and all leases, tenancies, licenses and other rights of occupancy or use of or for any portion of the Real Property or the Personal Property (including all amendments and renewals thereof).

(r) **"Permits"**: Any and all licenses, permits, authorizations, certificates of occupancy and other approvals that are in effect for the current use and operation of the Property.

(s) **"Personal Property"**: All tangible personal property and fixtures owned by Seller and located on or attached to the Real Property. **"Personal Property"** does not include property owned by others such as Tenants under Leases, parties to Service Contracts or Seller's Property manager. The term **"Personal Property"** shall not include insurance policies, utility deposits or bank accounts.

(t) **"Pre-Existing Insurance Claims"**: Any insurance claims made or to be made by Seller or any Seller Group party for any Event occurring prior to the Execution Date relating to the Property or any portion thereof or any loan held by Seller and/or any other Seller Group party.

(u) **"Proceeds"**: Any insurance proceeds or condemnation awards payable to Seller on account of any Event.

(v) **"Proceeds from Pre-Existing Insurance Claims"**: Any insurance proceeds resulting from any Pre-Existing Insurance Claims, regardless whether such insurance proceeds are received prior to or after Closing.

(w) **"Property"**: Collectively the Real Property, the Personal Property and the Intangible Property.

(x) **"Prorations Date"**: The day prior to the Closing Date.

(y) **"Real Property"**: The Land, together with Seller's interest in the buildings and other improvements and fixtures located thereon, and all rights of ways, ingress and egress, easements, rights, privileges, hereditaments and appurtenances thereto or in any way appertaining thereto.

(z) **"Security Deposits"**: The security, utility, key, damage and similar deposits, if any, specified in the Leases and which have not been applied by the landlord under such Leases prior to Closing.

(aa) **"Seller's Due Diligence Reports"**: All reports, documents, studies, and other written information relating to the maintenance and operation of the Property, in Seller's possession and control, and in the form and content maintained by Seller.

(bb) **"Seller Group"**: Seller and its member and manager and such member's trustee, master servicer, special servicer and certificate holders, all subsidiaries, parents and affiliates of such member and manager and each of the foregoing parties' past, present, and future officers, directors, shareholders, general partners, limited partners, members, agents, employees, representatives, participants, heirs, successors, assigns and attorneys and each and all of the heirs, successors, and assigns of each of the foregoing.

(cc) **"Service Contracts"**: Any and all service, maintenance, supply, operating contracts, or other agreements, however termed, written or oral, affecting the use, ownership, maintenance, or operation of all or any part of the Property (but specifically excluding any Leases and any management agreements).

(dd) **"Tenants"**: Those persons or entities holding rights of tenants under Leases.

(ee) **"Title Commitment"**: The commitment for issuance of an owner's title insurance policy issued by the Title Company in favor of Buyer in the full amount of the Purchase Price.

(ff) **"Title Company"**: First American Title Insurance Company at the office selected by the Escrow Agent.

1.3 Other Defined Terms. Other capitalized terms contained in this Agreement shall have the meanings assigned to them herein.

## ARTICLE II

### CONDITION

2.1 Information Regarding Property. Seller has provided and may in the future provide to Buyer copies of Seller's Due Diligence Reports. All of Seller's Due Diligence Reports are provided simply as an accommodation to Buyer, and Seller makes no representations as to their accuracy or completeness. Buyer understands that some of the Seller's Due Diligence Reports were provided by others to Seller and were not prepared by or verified by Seller. In no event shall Seller be obligated to deliver or make available to Buyer any of Seller's internal memoranda, attorney-client privileged materials or appraisals of the Property, if any.

2.2 Due Diligence.

(a) Buyer may or may not elect, but shall not be obligated, to seek financing, but in no event shall this transaction be contingent after the Feasibility Date upon Buyer's ability or election to obtain financing. Neither Seller nor any member of Seller Group has any obligation to finance Buyer's purchase of the Property. In the event Buyer elects to submit an application for financing with any entity related to any of Seller Group, such financing application shall be considered independently of this transaction, and neither the submission of the application nor

any decision or commitment by any such entity to provide financing to Buyer shall have any effect on Buyer's or Seller's rights and obligations hereunder.

(b) Buyer's obligations hereunder are expressly subject to Buyer's approval of the Property in all respects, including, but not limited to, financing, economic feasibility, zoning, the local government comprehensive plan, redevelopment potential, structural components of any improvements, governmental restrictions and requirements, availability of utilities, concurrency issues, physical condition, subsoil conditions, environmental matters, and such other matters as may be of concern to Buyer. Buyer shall have until the Feasibility Date in which to determine whether the Property is acceptable to Buyer, in its sole discretion, in all respects. If Buyer finds the Property to be unacceptable and elects not to proceed with the transaction contemplated hereby, Buyer shall, on or before the Feasibility Date, give notice of termination to Seller and the Escrow Agent (the "**Termination Notice**"). Upon any such termination and subject to Buyer's compliance with Section 2.6 hereof, (i) Seller and Buyer shall execute an acknowledgment of termination in form attached hereto as **Exhibit B** (the "**Termination Acknowledgment Agreement**"); (ii) the Deposit (less the Independent Consideration) shall be returned to Buyer; (iii) the Independent Consideration shall be delivered to Seller; and (iv) neither party shall have any further rights or obligations hereunder except with respect to the provisions hereof which specifically survive termination. If Buyer shall fail to give the Termination Notice to Seller prior to or on the Feasibility Date, (x) this Agreement shall remain in full force and effect, and (y) the Deposit shall be non-refundable to Buyer except as otherwise specifically provided herein.

2.3 Access. Until the Feasibility Date and thereafter if this Agreement is not terminated, Buyer and Buyer's agents and contractors shall be entitled to enter upon the Property at all reasonable times established by Seller, but only for the purpose of conducting tests and making site inspections and investigations. In doing so, however, Buyer agrees (a) that no invasive testing may be conducted without Seller's prior consent, which may be withheld by Seller in its sole discretion, (b) not to cause any damage or make any physical changes to the Property and (c) not to interfere with the rights of Tenants or others who may have a legal right to use or occupy the Property. Seller or its representative shall have the right to be present to observe any testing or other inspection performed on the Property. Under no circumstances shall the right of entry granted herein be interpreted as delivery of possession of the Property prior to Closing. Buyer and Buyer's agents and contractors shall maintain at all times during their entry upon the Property, commercial general liability insurance with limits of not less than Two Million Dollars combined single limit, bodily injury, death and property damage insurance per occurrence. If requested by Seller, Buyer and Buyer's agents or contractors shall deliver a certificate issued by the insurance carrier of each such policy to Seller prior to entry upon the Property.

2.4 Indemnification. To the extent allowed by law, Buyer shall protect, defend, indemnify, save and hold harmless the Seller Group against any and all Claims by or in favor of anyone whomsoever, resulting from, arising from, or occasioned in whole or in part by any act or omission by Buyer, its agents, contractors, employees, representatives or invitees in, upon, or at the Property, or from Buyer's inspection, examination and inquiry of or on the Property; provided, however, the indemnity which is the subject of this Section shall not cover liability arising from the gross negligence or willful misconduct of Seller Group or pre-existing conditions of the Property unless such pre-existing conditions are exacerbated by Buyer or its

consultants, agents, contractors, employees, representatives or invitees, in which case Buyer shall be liable for and to the extent of the exacerbated condition of the Property and not the pre-existing condition. The provisions of this Section shall survive the Closing or termination of this Agreement.

2.5 Buyer's Obligations with Respect to Inspections. If Buyer or its agents, employees or contractors take any sample from the Property in connection with any testing, Buyer shall, upon the request of Seller, provide to Seller a portion of such sample being tested to allow Seller, if it so chooses, to perform its own testing. Promptly after Buyer's independent factual, physical and legal examinations and inquiries of the Property, but in no event later than twenty (20) days after the damage occurs, Buyer shall restore the Property to its condition as of the Execution Date. Buyer shall promptly pay for all inspections upon the rendering of statements therefor and shall not suffer or permit the filing of any liens against the Property. If any such liens are filed, Buyer shall promptly cause them to be released or otherwise eliminated from being a lien upon the Property. The provisions of this Section shall survive termination of this Agreement.

2.6 Buyer's Due Diligence Reports. In the event the transaction contemplated by this Agreement is not closed for any reason whatsoever and in all events prior to the return of the Deposit to the extent permitted hereunder (a) Buyer shall deliver to Seller originals or copies of Buyer's Due Diligence Reports at no cost to Seller and without any representation or warranty whatsoever as to the accuracy or validity of the contents thereof; and (b) if Buyer defaults in its obligation to restore the Property as set forth above, Seller may setoff against the Deposit the reasonable expenses incurred by Seller to so restore the Property. In the event the transaction contemplated by this Agreement is not closed for any reason whatsoever, Buyer shall remain obligated with respect to the indemnities and other obligations contained in this Agreement. The provisions of this Section shall survive the termination of this Agreement.

2.7 Condition of the Property. If this Agreement is not terminated pursuant to Section 2.2 above, the following provisions shall be applicable and survive the Closing:

(a) Buyer does hereby acknowledge, represent, warrant and agree to and with Seller that, except as otherwise expressly provided in this Agreement and the Deed: (i) Buyer is expressly purchasing the Property in its existing condition "**AS IS, WHERE IS, AND WITH ALL FAULTS**" whether known or unknown with respect to all facts, circumstances, conditions and defects, both patent and latent; (ii) Seller has no obligation to inspect for, repair or correct any such facts, circumstances, conditions or defects or to compensate Buyer for same; (iii) Seller has provided Buyer sufficient opportunity to make such independent factual, physical and legal examinations and inquiries as Buyer deems necessary or appropriate with respect to the Property and the transaction contemplated by this Agreement; (iv) Seller has specifically bargained for the assumption by Buyer of all responsibility to inspect and investigate the Property and of all risk of adverse conditions and has structured the Purchase Price and other terms of this Agreement in consideration thereof; (v) Buyer has undertaken all such inspections and investigations of the Property as Buyer deems necessary or appropriate with respect to the Property and the suitability of the Property for Buyer's intended use, and based upon same, Buyer is and will be relying strictly and solely upon such inspections and examinations and the advice and counsel of its own consultants, agents, legal counsel and officers, Buyer has approved the Property in all respects,

and Buyer is and will be fully satisfied that the Purchase Price is fair and adequate consideration for the Property; and (vi) Seller is not making and has not made any warranty or representation with respect to any materials, marketing information, offering memoranda or pamphlets listing or describing the Property or other data provided by Seller or others on behalf of Seller to Buyer (whether prepared by or for Seller or others) or the education, skills, competence or diligence of the preparers thereof or the physical condition or any other aspect of all or any part of the Property as an inducement to Buyer to enter into this Agreement and thereafter to purchase the Property or for any other purpose.

(b) EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT AND THE DEED, SELLER HEREBY DISCLAIMS ALL WARRANTIES OF ANY KIND OR NATURE WHATSOEVER (INCLUDING WARRANTIES OF HABITABILITY AND FITNESS FOR PARTICULAR PURPOSES), WHETHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO WARRANTIES WITH RESPECT TO THE PROPERTY, TAX LIABILITIES, ZONING, LAND VALUE, AVAILABILITY OF ACCESS OR UTILITIES, INGRESS OR EGRESS, GOVERNMENTAL APPROVALS, OR THE SOIL CONDITIONS OF THE LAND. BUYER FURTHER ACKNOWLEDGES THAT BUYER IS BUYING THE PROPERTY "AS IS" AND IN ITS PRESENT CONDITION AND THAT EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT AND THE DEED, BUYER IS NOT RELYING UPON ANY REPRESENTATION OF ANY KIND OR NATURE MADE BY ANY OF SELLER GROUP WITH RESPECT TO THE LAND OR THE PROPERTY, AND THAT, IN FACT, NO SUCH REPRESENTATIONS WERE MADE EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT AND THE DEED.

(c) WITHOUT IN ANY WAY LIMITING ANY OTHER PROVISION OF THIS AGREEMENT, SELLER MAKES NO WARRANTY WITH RESPECT TO THE PRESENCE ON OR BENEATH THE LAND (OR ANY PARCEL IN PROXIMITY THERETO) OF HAZARDOUS MATERIALS. BY ACCEPTANCE OF THIS AGREEMENT AND THE DEED, BUYER ACKNOWLEDGES THAT BUYER'S OPPORTUNITY FOR INSPECTION AND INVESTIGATION OF SUCH LAND (AND OTHER PARCELS IN PROXIMITY THERETO) HAS BEEN ADEQUATE TO ENABLE BUYER TO MAKE BUYER'S OWN DETERMINATION WITH RESPECT TO THE PRESENCE ON OR BENEATH THE LAND (AND OTHER PARCELS IN PROXIMITY THERETO) OF SUCH HAZARDOUS MATERIALS.

(d) BUYER ACKNOWLEDGES AND AGREES THAT NONE OF SELLER GROUP SHALL BE RESPONSIBLE FOR ANY CLAIMS ARISING OUT OF OR RELATING TO MOLD AND/OR OTHER MICROSCOPIC ORGANISMS AT THE PROPERTY INCLUDING BUT NOT LIMITED TO PROPERTY DAMAGES, PERSONAL INJURY, ADVERSE HEALTH EFFECTS, LOSS OF INCOME, EMOTIONAL DISTRESS, DEATH, LOSS OF USE OR LOSS OF VALUE AND BUYER HEREBY RELEASES SELLER GROUP FROM THE SAME. BUYER HEREBY ACKNOWLEDGES THAT IT HAS READ AND UNDERSTOOD THIS DISCLOSURE AND RELEASE AND AGREES TO THE PROVISIONS CONTAINED HEREIN.

2.8 Maintenance of Property. Except as Buyer may otherwise consent in writing, until the Closing Date, unless this Agreement is sooner terminated, Seller shall: (i) carry on the business of the Property in the ordinary course and in a manner consistent with Seller's prior practices; (ii) maintain the Property in its present condition and repair, ordinary wear and tear excepted and subject to the terms of Section 12.2 hereof; (iii) maintain the existing insurance policies for the Property and the operation thereof (and any replacements thereof) in full force and effect; (iv) not sell, transfer, encumber, mortgage or place any lien upon the Property or in any way create or consent to the creation of any title condition affecting the Property; and (v) not enter into any new Service Contracts relating to the Property unless they are cancelable upon five (5) days or less notice.

2.9 Termination of Service Contracts. Seller shall terminate all Service Contracts effective as of Closing, and Buyer shall have no obligations under such Service Contracts.

### ARTICLE III

#### PURCHASE PRICE AND TERMS OF PAYMENT; CLOSING ADJUSTMENTS

3.1 Purchase Price. The total Purchase Price shall be the Purchase Price set forth in Section 1.1 of this Agreement.

3.2 Payment of Purchase Price. The Purchase Price shall be paid as follows:

(a) Credit for Deposit. On or before one (1) Business Day after the Execution Date, Buyer shall deliver in escrow the Initial Deposit by cashier's check or by wire transfer to the Escrow Agent. If Buyer fails to so deliver the Initial Deposit, then Seller, at Seller's sole discretion, may terminate this Agreement by providing notice to Buyer of such termination and thereafter, this Agreement shall be terminated and neither party shall have any further rights or obligations hereunder except with respect to the provisions hereof which specifically survive termination. The Deposit is consideration for the rights granted to Buyer to purchase the Property and shall be non-refundable except as otherwise provided herein. If and only to the extent Buyer in its sole discretion and dealing entirely with the Escrow Agent (it being acknowledged by Buyer that Seller shall have no responsibility or liability in connection therewith) supplies Buyer's Taxpayer Identification Number to the Escrow Agent and executes all necessary forms required by the Escrow Agent, the Deposit shall be held in an interest bearing account with a financial institution selected by the Escrow Agent. Any interest accrued thereon shall become a part of the Deposit to be applied or disposed of in the same manner as the Deposit. At the Closing Buyer shall receive a credit against the Purchase Price in the amount of the Deposit (less any accrued interest thereon) and the Deposit (less any accrued interest thereon) shall be delivered to Seller (and any accrued interest on the Deposit shall be delivered upon Closing to Buyer by a separate check from the Escrow Agent).

(b) Payment at Closing. The balance of the Purchase Price, subject to the prorations and adjustments set forth in this Agreement, shall be paid (i) by Buyer by wire transfer to Escrow Agent's account at the time of Closing, and (ii) by the Escrow Agent to Seller by wire transfer to Seller's account immediately upon Closing. Wired funds must be received in the Escrow Agent's

account prior to 2:00 p.m. Eastern time on the Closing Date for Seller to receive the benefit of such funds. Accordingly, if funds are received after 2:00 p.m. Eastern time on any day, they shall not be deemed received until the following Business Day. If the Escrow Agent does not receive the funds on the Closing Date due to the action or inaction of Buyer and Seller elects not to exercise any of its default remedies, then, if the Escrow Agent has not received the funds by 2:00 p.m. Eastern time on the date five (5) Business Days after the Closing Date and Seller has not elected to exercise any of its default remedies, Buyer shall pay interest on the Purchase Price from the Closing Date until the funds are deemed to have been received by the Escrow Agent, at the rate of five percent (5%) per annum.

3.3 Closing Adjustments and Prorations. Except as otherwise provided in this Section, all adjustments and prorations to the Purchase Price payable at Closing shall be computed as of the end of the Prorations Date; provided, however, the figures utilized by Seller for the proration of rents, security deposits and other expenses for the Property may be calculated using information from a date prior to the Prorations Date, but in no event more than four (4) Business Days prior to the Prorations Date. All items of revenue, cost and expense of the Property with respect to the period prior to the Prorations Date shall be for the account of the Seller. All items of revenue, cost and expense of the Property with respect to the period on and after the Prorations Date shall be for the account of Buyer. Such adjustments and prorations shall include the following:

(a) Revenues and Expenses. Seller shall be entitled to receive all revenues and shall be charged with all expenses relating to the ownership and operation of the Property through the Prorations Date. All revenues and expenses shall be prorated as of the Prorations Date. With respect to any delinquent rents or other revenue, Buyer shall use commercially reasonable efforts to collect the same after the Closing; provided, however, that any such monies collected after the Closing shall be applied first to rents or monies, as applicable, due and owing to Buyer after the Closing. All such collections in excess of the credit to Seller at Closing, less costs of collection, including reasonable attorney fees, shall be remitted by Buyer to Seller promptly after receipt, but in any event not later than thirty (30) days after receipt. The foregoing shall not, however, prohibit or restrict Seller from attempting to collect in any lawful manner after the Closing any such delinquent rent or other revenue directly from the Tenant or other party owing such amounts. The provisions of this Section shall survive Closing.

(b) Security Deposits; Lease Prepayments; Lease Obligations. Buyer shall receive credits against the Purchase Price at Closing for any (i) Security Deposits, and (ii) prepaid rents paid to Seller by the Tenants.

Seller agrees that during the period after the Execution Date and through the Closing Date, Seller shall provide Buyer with notice of all new Leases and Lease expansions, renewals, modifications and terminations (collectively, "**Lease Documents**") and Buyer shall have the right to approve any such new Leases and Lease Documents prior to execution. Buyer shall provide its approval or disapproval (based on Buyer's sole discretion) and the reasons therefor in writing to Seller within five (5) Business Days after Seller notifies Buyer in writing of Seller's desire to enter into any new Leases and Lease Documents. In the event Buyer does not notify Seller of its approval or disapproval during such five (5) Business Day period, Buyer shall be deemed to have approved the new Lease or Lease Document.

Buyer and Seller agree that if Seller executes any new Leases or Lease Documents with respect to the Property during the period after the Execution Date and prior to Closing and the terms of such new Leases or Lease Documents (or related brokerage contracts) obligate Seller as landlord to pay leasing commissions, construct tenant improvements, pay tenant improvement allowances and/or pay other costs ("**Lease Obligations**"), Buyer shall pay to Seller at Closing the amount of all such Lease Obligations incurred by Seller and actually paid as of the Closing Date and shall be responsible as of Closing for the obligation to pay and assume all such Lease Obligations not yet paid or completed by Seller as of the Closing Date. In addition, Buyer shall be responsible as of Closing for all Lease Obligations of Seller as landlord under any Leases (and related brokerage contracts) executed prior to the Execution Date with respect to Lease Obligations not due as of the Closing Date; e.g. lease commissions for future extensions. The provisions of this Section shall survive Closing.

(c) Taxes and Assessments; Pending and Certified Liens. Taxes and assessments for the year of Closing shall be prorated as of the Prorations Date upon the amount of such taxes for the year of Closing, using the maximum discount, if any, if the amount of such taxes is known at the time of Closing; if such amount cannot be then ascertained, proration shall be based upon the amount of the taxes for the preceding year, using the maximum discount, if any. If any tax proration shall be based upon the amount of taxes for the year preceding the year of Closing, such taxes, at the request of either party, shall be re-prorated and adjusted between the parties, on the basis of the tax bills for the year of Closing when received, using the maximum discount, if any. To the extent that Seller completes any tax appeal which results in savings for periods prior to but not after Closing, Seller shall be entitled to retain all savings. City/County, public liens and/or similar liens (collectively, "**Public Liens**"), if any, certified or for which the work has been substantially completed on the date of Closing and for which payment is due in full as of the Closing, shall be paid by Seller. Any Public Liens for which an installment payment is due and/or for which the owner of the Property has the right to make installment payments on an annual basis (as opposed to being paid in a lump sum), shall be prorated for the year of Closing. Buyer shall assume all obligations for any other Public Liens from and after Closing. Other assessments not included on the regular property tax bills, license fees for transferred licenses, and state or municipal fees and taxes for the Property for the applicable fiscal period during which Closing takes place shall be adjusted as of the Prorations Date on the basis of the most recent ascertainable assessments and rates, and shall be re-prorated as necessary pursuant to Section (f) below. The provisions of this Section shall survive Closing.

(d) Utility Charges. To the extent possible: (i) Seller and Buyer shall request that all electric, water, sewer, gas, fuel, waste collection and removal and other utility companies read the meters as of the Prorations Date; (ii) Seller shall be responsible for all such utility charges incurred through the Prorations Date; (iii) Buyer shall make application to the various companies for the continuation of such services and the establishment of the required accounts in the name of Buyer effective from and after the Closing Date; (iv) all prepaid deposits for utilities shall be refunded to Seller at the time of Closing by the utility companies; and (v) it shall be Buyer's responsibility to make any utility deposits required for the continuation of such services from and after the Closing Date. If and only if any utility companies will not read the meters as of the Prorations Date, the expenses for those utility companies shall be prorated as of the Prorations Date. It shall be assumed that utility charges were incurred uniformly during the billing period

in which the Closing occurs. If bills for the applicable period are unavailable, the amounts of such charges will be estimated based upon the latest known bills.

(e) Other Prorations. In addition to the previously stated adjustments and prorations at Closing the parties shall also make such adjustments and prorations to the Purchase Price as are customary and usual in transactions similar to the transaction contemplated by this Agreement.

(f) Reproration and Post-Closing Adjustments. In the event that any adjustments or prorations cannot be apportioned or adjusted at Closing by reason of the fact that final or liquidated amounts have not been ascertained, or are not available as of such date, the parties hereto agree to apportion or adjust such items on the basis of their best estimates of the amounts at Closing and to re-prorate any and all of such amounts promptly when the final or liquidated amounts are ascertained. With respect to any rents, receipts and pass-throughs for operating expenses and taxes not billed and paid by a Tenant under a Lease on a monthly basis that remain unpaid as of the Closing Date, the parties hereto agree to apportion or adjust such rents, receipts and pass-throughs as and when such sums are paid by the Tenant. In the event of any omission or mathematical error on the closing statement, or if the prorations, apportionments and computations shall prove to be incorrect for any reason, the same shall be promptly adjusted when determined and the appropriate party paid any monies owed. This provision shall survive the Closing.

3.4 Costs and Expenses. Buyer and Seller shall each pay one-half of any escrow fees of the Escrow Agent/Title Company, all costs of recording, all documentary stamp taxes, surtaxes, transfer taxes and recording taxes on the Deed, if any. Seller shall pay all title search, examination and out-of-pocket fees of the Escrow Agent and the Title Company and the title insurance premium for the standard owner's title insurance policy to be issued to Buyer by the Title Company. Buyer shall pay the cost of any extended title insurance coverage and endorsements to Buyer's title insurance policy requested or required by Buyer and the costs of any survey or survey updates or modification ordered by Buyer. Attorneys' fees, consulting fees, and other due diligence expenses shall be borne by the party incurring such expense. The provisions of this Section shall survive the Closing.

## **ARTICLE IV**

### **TITLE**

4.1 Evidence of and Encumbrances upon Title. Seller has ordered the Title Commitment and shall cause the Escrow Agent to deliver it, together with copies of all exceptions reflected therein, to Buyer and/or Buyer's counsel electronically upon completion. The Title Commitment shall be the basis upon which Buyer reviews the status of title to the Land. Buyer shall give Seller, with a copy to the Escrow Agent, notice of objections, if any, to exceptions in the Title Commitment on or before the Feasibility Date.

If Buyer timely gives notice of objection(s) to any item(s), then Seller shall have the right but not the obligation to use reasonable diligence to remove, discharge or correct such liens,

encumbrances or objections and shall have a period of sixty (60) days after receipt of notice thereof in which to do so (and if necessary the Closing Date shall be extended). Seller shall not in any event be obligated to pay any sums of money or to litigate any matter in order to remove, discharge or correct any lien, encumbrance or objection; provided, however, Seller shall be obligated to provide releases of any loan documents held by any of Seller Group. Any attempt by Seller to remove other title exceptions shall not impose an obligation upon Seller to remove such exceptions. If Seller shall be unwilling or unable to remove or discharge such other liens, encumbrances or objections within such period, then Buyer may, at its option, no later than five (5) Business Days after Seller notifies Buyer of Seller's unwillingness or inability, either terminate this Agreement or accept title in its then existing condition without reduction of the Purchase Price. If Buyer shall elect to terminate this Agreement, subject to Buyer's compliance with Section 2.6 hereof, the Deposit, less the Independent Consideration, shall be returned to Buyer, the Independent Consideration shall be delivered to Seller, and neither party shall have any further rights or obligations hereunder except with respect to the provisions hereof which specifically survive termination. If Buyer fails to give notice of objection(s) to Seller on or before the Feasibility Date, all matters reflected on the Title Commitment shall be deemed to be acceptable encumbrances (collectively, "**Acceptable Encumbrances**").

4.2 Survey. Prior to the Feasibility Date, Buyer may cause a survey of the Real Property to be prepared or updated at Buyer's sole cost and expense. Any such survey or survey update shall conform to the ALTA and, if applicable, State standards. If any encroachments or other matters not acceptable to Buyer are shown, Buyer may give notice of objection(s) to Seller on or before the Feasibility Date, in which case any such encroachment or other matter shall be treated in the same manner as a title defect pursuant to Section 4.1 above. If, however, Buyer fails to obtain a survey or update or if Buyer obtains a survey or update but fails to give notice of objection prior to the Feasibility Date, all encroachments and other matters of survey shall be deemed approved by Buyer and shall constitute Acceptable Encumbrances.

4.3 Updated Title Commitment. On or before the Closing Date, Buyer and/or Seller may cause the Escrow Agent to update the Title Commitment. If the updated Title Commitment contains exceptions that do not constitute Acceptable Encumbrances, Buyer shall give Seller, with a copy to the Escrow Agent, notice of objection(s), if any, thereto prior to the completion of the Closing. If Buyer timely and properly gives notice of objection(s) to any such item(s), then same shall be treated in the same manner as a title defect pursuant to Section 4.1 above. If the updated Title Commitment contains no exceptions other than those reflected on the Title Commitment and other Acceptable Encumbrances or if Buyer fails to give notice of objection(s) to Seller prior to completion of Closing, all matters reflected on the updated Title Commitment shall be deemed Acceptable Encumbrances, this Agreement shall remain in full force and effect and Buyer shall be obligated to complete the transaction as required by this Agreement.

4.4 Title Policy. At Closing and as a condition to Buyer's obligation to close, the Title Company shall issue or be irrevocably and unconditionally committed to issue to Buyer an owner's title insurance policy, insuring that title is vested in Buyer as the fee simple owner of the Land in the full amount of the Purchase Price and subject to only the Acceptable Encumbrances.

## ARTICLE V

### ESCROW AND CLOSING

5.1 Escrow Instructions. Upon execution of this Agreement, the parties hereto shall deposit an executed counterpart of this Agreement with the Escrow Agent, and this Agreement shall serve as the instructions to the Escrow Agent as the escrow holder for consummation of the purchase and sale contemplated hereby. Seller and Buyer agree to execute such reasonable additional and supplementary escrow instructions as may be appropriate to enable the Escrow Agent to comply with the terms of this Agreement; provided, however, that in the event of any conflict between the provisions of this Agreement and any supplementary escrow instructions, the terms of this Agreement shall control.

5.2 Time and Place. Closing shall take place on the Closing Date or such earlier date as may be mutually acceptable to the parties with all deliveries to be made in escrow to the Escrow Agent prior to or on the Closing Date; provided, however, that pursuant to Sections 4.1 and 4.3 Seller at Seller's option may extend the Closing Date for purposes of curing objections to the status of title that were timely and properly raised by Buyer. Buyer acknowledges that Seller may at Seller's option use closing proceeds to satisfy any mortgage or lien on the Property.

5.3 Seller's Deposit of Documents. At or before Closing, Seller shall deposit or cause to be deposited into escrow with the Escrow Agent the following items:

(a) an executed Deed with respect to the Land, in the form of **Exhibit C** hereto, together with any State, County and local transfer tax declarations and forms required to be executed by Seller.

(b) an executed Affidavit in the form of **Exhibit D** hereto.

(c) an executed Bill of Sale (without warranties) with respect to the Personal Property, if any, in the form of **Exhibit E** hereto.

(d) two counterparts of an executed Assignment and Assumption Agreement with respect to the Intangible Property, in the form of **Exhibit F** hereto, together with originals or copies of any Leases and Permits, to the extent in Seller's possession (which such Leases and Permits shall be delivered at Seller's Property manager's office).

(e) an executed form letter to advise all Tenants under Leases, if any, in the form of **Exhibit G** hereto, of the sale to Buyer ("**Notice to Tenant**").

(f) an executed Certificate of Non-Foreign Status in the form of **Exhibit I** hereto.

(g) to the extent any declaration of restrictions, easements and agreements ("**REA**") requires a specific written assignment and/or assumption agreement with respect to such REA, an executed assignment and/or assumption agreement with respect to such REA in the form required by the REA.

(h) an combined executed Buyer - Seller Closing Statement prepared by the Escrow Agent reflecting all financial aspects of the transaction ("**Closing Statement**").

(i) all plans, specifications, permits, licenses and keys in Seller's actual possession with respect to the Property (which shall be delivered at Seller's Property manager's office).

(j) an executed Certificate of Assistant Secretary of LNR Partners, LLC, as manager of Seller, certifying copies of the Articles of Organization of Seller as filed with the Secretary of State of its state of formation and the executed Operating Agreement/Limited Liability Company Agreement of Seller and general resolutions of LNR Partners, LLC approving the sale of properties and containing incumbency language as to the signatory of the Closing documents for Seller.

(k) an executed counterpart of the Affidavit of Property Value.

5.4 Buyer's Deposit of Documents. At or before Closing Buyer shall deposit or cause to be deposited into escrow with the Escrow Agent the following items:

(a) Certified funds to close in the amount required by Section 3.2.

(b) any State, County and local transfer tax declarations and forms required to be executed by Buyer.

(c) two counterparts of an executed Assignment and Assumption Agreement, in the form of **Exhibit F** hereto.

(d) to the extent any REA requires a specific written assignment and/or assumption agreement with respect to such REA, an executed assignment and/or assumption agreement with respect to such REA in the form required by the REA.

(e) an executed Closing Statement.

(f) evidence reasonably satisfactory to Seller and the Escrow Agent/Title Company reflecting that all documents executed by Buyer at Closing were duly authorized and executed.

(g) [INTENTIONALLY OMITTED]

(h) [INTENTIONALLY OMITTED]

(i) [INTENTIONALLY OMITTED]

(j) A paid receipt from Buyer's Broker.

(k) an executed counterpart of the Affidavit of Property Value.

5.5 Other Documents. Buyer and Seller shall each deliver such other documents as are otherwise required by this Agreement or as are reasonably necessary to consummate the purchase and sale of the Property in accordance with the terms hereof. Unless the parties

otherwise agree in writing, the Escrow Agent is hereby designated as the "**Reporting Person**" for the transaction pursuant to Section 6045(e) of the United States Code and the regulations promulgated thereunder. If requested in writing by either party, the Escrow Agent shall confirm its status as the Reporting Person in writing, which such writing shall comply with the requirements of Section 6045(e) of the United States Code and the regulations promulgated thereunder.

5.6 Possession. Possession of the Property, subject to the Leases, shall be surrendered to Buyer at the Closing.

5.7 Tenant Notices. Immediately after Closing, Buyer shall deliver to all Tenants, if any, a copy of the Notice to Tenant, which obligation shall survive Closing.

## ARTICLE VI

### ENVIRONMENTAL MATTERS

6.1 Release. Without limiting Section 2.6, Buyer acknowledges that Seller is not in any manner responsible to Buyer for the presence of any Hazardous Materials at, on, in, under or relating to the Property, if any. Buyer hereby specifically releases the Seller Group from any and all Claims relating to the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release of any Hazardous Materials on the Property, if any, including without limitation, any residual contamination, in, on, under or about the Property or affecting natural resources, whether prior to or following Closing, and also including, without limitation, any liability due to asbestos-containing materials at the Property. BUYER'S CLOSING HEREUNDER SHALL BE DEEMED TO CONSTITUTE AN EXPRESS WAIVER OF BUYER'S AND ITS SUCCESSORS' AND ASSIGNS' RIGHTS TO SUE SELLER AND OF BUYER'S RIGHT TO CAUSE ANY OF SELLER GROUP TO BE JOINED IN AN ACTION BROUGHT UNDER ANY FEDERAL, STATE OR LOCAL LAW, RULE, ACT, OR REGULATION NOW EXISTING OR HEREAFTER ENACTED OR AMENDED WHICH PROHIBITS OR REGULATES THE USE, HANDLING, STORAGE, TRANSPORTATION OR DISPOSAL OF HAZARDOUS MATERIALS OR WHICH REQUIRES REMOVAL OR REMEDIAL ACTION WITH RESPECT TO SUCH HAZARDOUS MATERIALS, SPECIFICALLY INCLUDING BUT NOT LIMITED TO FEDERAL "**CERCLA**", "**RCRA**", AND "**SARA**" ACTS. Each covenant, agreement, representation, and warranty of Buyer contained in this Section of this Agreement shall survive the Closing or termination of this Agreement.

6.2 Indemnification. Without limiting the provisions of Section 2.4 and to the extent allowed by law, Buyer hereby indemnifies and agrees to defend, protect, save and hold Seller Group harmless from and against any and all Claims paid, incurred or suffered by, or asserted against Seller, with respect to or as a direct or indirect result of the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release of any Hazardous Material from, the Property from and after the Closing Date; provided, however, the indemnity which is the subject of this Section shall not cover liability arising from the negligence or willful misconduct of Seller Group or pre-existing conditions of the Property unless such pre-existing conditions are

exacerbated by Buyer or its consultants, agents, contractors, employees, representatives or invitees, in which case Buyer shall be liable for and to the extent of the exacerbated condition of the Property and not the pre-existing condition. The foregoing indemnification includes (a) all foreseeable and unforeseeable consequential damages to the maximum extent allowed by law; (b) the costs of any required or necessary repair, remediation, or decontamination of the Property; and (c) any fines and penalties that may be imposed. This agreement to defend, indemnify, protect, save and hold harmless shall survive the Closing of this Agreement and shall be in addition to any other obligations or liability that Buyer may have to Seller Group at common law or by statute or otherwise.

6.3 Confidentiality of Hazardous Materials Reports. Unless and until the Closing actually occurs, and until Buyer is legally required to make such disclosure, Buyer, its agents, consultants and employees shall keep confidential all Hazardous Materials Reports and other information, received or completed by Buyer in Buyer's independent factual, physical and legal examinations and inquiries of the Property, except that: (a) Buyer shall promptly after receipt provide copies thereof to Seller; and (b) Buyer may disclose same to its consultants if Buyer first obtains the agreement in writing of such consultants to keep such Hazardous Materials Reports and related documentation confidential. Unless and until the Closing actually occurs, neither the contents nor the results of any test, report, analysis, opinion or other information shall be disclosed by Buyer, its agents, consultants and employees without Seller's prior approval unless and until Buyer is legally required to make such disclosure. The provisions of this Section shall survive the termination of this Agreement.

## ARTICLE VII

### WARRANTIES AND REPRESENTATIONS

7.1 Buyer's Warranties and Representations. Buyer warrants and represents that: (a) Buyer has the full right, power, and authority to purchase the Property from Seller as provided in this Agreement and to carry out Buyer's obligations hereunder; (b) if Buyer is an entity, Buyer is duly organized and in good standing under the laws of the state in which it is organized and duly authorized to conduct business in the State, provided however, in the event that Buyer assigns this Agreement to an entity pursuant to the terms of Article VIII of this Agreement, any such entity shall be duly organized and in good standing under the laws of the state of its formation and qualified to transact business in the State; (c) all requisite action necessary to authorize Buyer to enter into this Agreement and to carry out Buyer's obligations has been obtained; (d) this Agreement has been duly authorized, executed and delivered by Buyer; (e) [INTENTIONALLY OMITTED]; and (f) [INTENTIONALLY OMITTED].

7.2 Seller's Warranties and Representations. Seller warrants and represents that: (a) Seller has the full right, power, and authority to sell the Property to Buyer as provided in this Agreement and to carry out Seller's obligations hereunder; (b) Seller is the type of entity specified in the opening paragraph of this Agreement and is duly organized and in good standing under the laws of its state of formation; (c) all requisite action necessary to authorize Seller to enter into this Agreement and to carry out Seller's obligations has been obtained; (d) this Agreement has been duly authorized, executed and delivered by Seller; and (e) the execution of

this Agreement and the Closing to occur hereunder do not and will not violate any contract, covenant or other agreement to which Seller may be a party or by which Seller may be bound. The provisions of this Section shall survive the Closing.

## **ARTICLE VIII**

### **ASSIGNMENT**

Buyer's reputation, experience, and financial status constitute a material inducement and a substantial part of the consideration for sale of the Property by Seller to Buyer. Therefore, Buyer may not assign this Agreement, nor may any of Buyer's rights hereunder or any ownership interest in Buyer be transferred in any manner to any person or entity, without Seller's specific prior written consent, which consent may be withheld by Seller for any reason whatsoever.

## **ARTICLE IX**

### **BROKERAGE**

Buyer represents and warrants to Seller that Buyer has not contacted or entered into any agreement with any real estate broker, agent, finder, or any other party in connection with this transaction other than the Disclosed Brokers and that Buyer has not taken any action which would result in any real estate broker's finder's, or other fees or commissions being due or payable to any other party with respect to this transaction. Seller represents and warrants to Buyer that Seller has not contacted or entered into any agreement with any real estate broker, agent, finder, or party in connection with this transaction other than the Disclosed Brokers and that Seller has not taken any action which would result in any real estate broker's, finder's, or other fees or commissions being due and payable to any other party with respect to this transaction. To the extent allowed by law, each party hereby indemnifies, protects, defends and agrees to hold the other party harmless from any loss, liability, damage, cost, or expense (including, but not limited to, reasonable attorneys' fees) resulting to the other party from a breach of the representation and warranty made by such party herein. Seller agrees to pay the Disclosed Brokers a commission in the amount of 6.20% of the Purchase Price, to be split 3.50% to the Listing Broker and 2.70% to the Buyer's Broker in accordance with a separate written agreement by and between Seller and the Listing Broker, which commission shall be paid only if, as and when Closing actually occurs and the Purchase Price is received by Seller. The provisions of this Article shall survive the Closing and termination of this Agreement.

## **ARTICLE X**

### **DEFAULT**

10.1 Buyer's Default. If Buyer shall fail to close the transaction contemplated hereby as and when required or if Buyer shall otherwise be in default of its obligations hereunder prior to Closing, the Seller's sole and exclusive remedy for same shall be to cancel the Agreement and retain the Deposit as liquidated damages for Buyer's failure. The parties acknowledge that it would be impractical to fix the actual damages suffered by Seller as a result of such default, and

the amount of liquidated damages represents a fair and reasonable compensation to Seller for such failure. After payment to Seller of the Deposit, neither party shall have any further rights or obligations hereunder except with respect to the provisions hereof which specifically survive termination. If subsequent to Closing Buyer shall fail to comply with its obligations contained herein which survive Closing, Seller, in addition to any rights and remedies provided herein, shall be entitled to any and all remedies available at law or in equity.

10.2 Seller's Default. If this transaction shall not be closed because of default of Seller, the Deposit, less the Independent Consideration shall, at Buyer's election, be refunded to Buyer on demand, the Independent Consideration shall be released to Seller, and, after repayment of the Deposit, less the Independent Consideration to Buyer, this Agreement shall be null and void, neither party shall have any further rights or obligations hereunder except with respect to the provisions hereof which specifically survive termination; or Buyer shall have the right to sue for specific performance of this Agreement, provided that such specific performance remedy shall be available to Buyer only upon Buyer's full satisfaction of each of Buyer's obligations under this Agreement, including without limitation Buyer's obligation to deliver the Deposit to the Escrow Agent and delivering sufficient proof to the Escrow Agent and Seller that Buyer is ready, willing and able to close this transaction. If, however, the equitable remedy of specific performance is not available, Buyer may seek any other right or remedy available at law or in equity; provided, however, that in no event shall Seller's liability exceed the lesser of (i) \$25,000 or (ii) the actual reasonable out-of-pocket expenses incurred by Buyer in connection with this Agreement. For the purposes of this provision, specific performance shall be considered not available to Buyer only if a court of competent jurisdiction determines conclusively that Buyer is entitled to specific performance on the merits of its claim but said court is unable to enforce specific performance due to reasons beyond the control of the court. The option selected by Buyer shall be Buyer's sole and exclusive remedy, and in no event shall Buyer be entitled to damages except as specifically set forth herein. To the extent allowed by law, Buyer agrees to indemnify, defend, protect, save and hold harmless the Seller Group from and against any and all Claims paid, incurred or suffered by or asserted against any of the Seller Group as a result of or arising out of Buyer wrongfully seeking, commencing and/or prosecuting a specific performance action against any of the Seller Group or in any way wrongfully filing a lis pendens or similar action against the Property, which Claims shall include without limitation any amounts which would otherwise have been realized by Seller had Seller been able to sell, transfer or convey the Property to any other buyer free of any such specific performance, lis pendens or other similar action.

10.3 No Obligation after Closing. Buyer and Seller expressly acknowledge and agree that neither Seller nor Buyer has any obligations with respect to the Property that survive Closing, except as specifically set forth herein. The provisions of this Section shall survive the Closing.

## **ARTICLE XI**

### **NO JOINT VENTURE**

Buyer acknowledges and agrees that neither Seller nor any other member of the Seller Group is a venturer, co-venturer, insurer, guarantor or partner of Buyer in Buyer's development

of, construction upon and resale of the Property, and that Seller and Seller Group bear and shall bear no liability whatsoever resulting from or arising out of Buyer's ownership and development of, and construction upon, the Property. The provisions of this Article shall survive the Closing.

## ARTICLE XII

### MISCELLANEOUS

12.1 [INTENTIONALLY OMITTED]

12.2 Risk of Loss.

(a) Seller shall retain all rights with respect to any Pre-Existing Insurance Claims and any Proceeds from Pre-Existing Insurance Claims.

(b) Seller agrees to give Buyer prompt notice of any Event occurring after the Execution Date.

(c) If after the Execution Date and prior to Closing, (i) any Event shall occur which would cost more than \$50,000 to repair or which would materially interfere with the present use of such Property, Buyer shall have the right to terminate this Agreement by giving notice to Seller in the form of the Termination Acknowledgment Agreement, within ten (10) days after Buyer has received notice from Seller or otherwise learns of the Event; provided, however, upon Seller's receipt of the notice of termination as required above, Seller shall have the right, in its sole discretion, to elect to escrow the amount of the damage from such Event, which escrowed funds shall be handled in accordance with the escrow provisions in (d) below, by giving Buyer written notice of such election within five (5) days after Seller's receipt of Buyer's notice of termination, in which case, Buyer's notice of termination shall be of no force and effect, or (ii) any Event shall occur which would cost an amount greater than or equal to fifty percent (50%) of the Purchase Price to repair, Seller shall have the right to terminate this Agreement by notice thereof delivered to Buyer within ten (10) days after the Event. Upon such termination and subject to Buyer's compliance with Section 2.6 hereof, the Deposit (less the Independent Consideration) shall be returned to Buyer, the Independent Consideration shall be delivered to Seller, and neither party shall have any further rights or obligations hereunder except with respect to the provisions hereof which specifically survive termination. If Buyer or Seller do not so timely elect to terminate this Agreement or Buyer elects to terminate this Agreement and Seller notifies Buyer of Seller's election to escrow the amount of the damage from such Event, Seller shall not be obligated to repair the Property, Closing shall take place as provided herein and at Closing Seller shall escrow funds as provided in (d) below, and Seller shall retain all rights in and to the Proceeds and the right to process and handle any claim from the Event with Seller's insurance company.

(d) If, after the Execution Date and prior to Closing, any Event shall occur which would cost less than \$50,000.00 to repair or which would not materially interfere with the present use of the Property, Buyer may not terminate this Agreement and the Closing shall take place as provided herein, with Seller establishing an escrow at Closing with the Escrow Agent

for the reasonable estimated cost to complete the repair of the damage caused by the Event (the "**Escrow**"), it being agreed by Buyer and Seller that to the extent Seller makes repairs prior to Closing, the cost of such repairs shall only be included as part of the Escrow to the extent Seller has not made payment for such repairs prior to Closing. Such Escrow shall be governed by an escrow agreement to be agreed upon by Buyer and Seller (the "**Escrow Agreement**"), which Escrow Agreement shall provide, among other things, for the repairs to be made by or at Buyer's direction, release of the funds in the Escrow for payment of such repairs and to the extent there are any funds left in the Escrow once the repairs have been completed, such funds shall be released to Seller. Seller shall have no obligations in connection with an Event other than to establish the Escrow at Closing as provided herein.

(e) Seller shall retain the exclusive right to process and handle all claims with Seller's insurance company and any payment by the insurance company shall be disbursed to Seller and in the event any payments are received by Buyer, Buyer shall deliver such payments to Seller within five (5) days after Buyer's receipt thereof. Additionally, Buyer agrees to provide access to Seller and its agents at all reasonable times for the purpose of pursuing any claims with Seller's insurance company.

(f) The provisions of this Section shall survive Closing.

12.3 Construction. The terms "**Seller**" and "**Buyer**" whenever used in this Agreement shall include the heirs, personal representatives, successors and assigns of the respective parties hereto; provided, however, that Buyer's right of assignment is restricted by the provisions hereof. Whenever used, the singular number shall include the plural and the plural the singular, and the use of any gender shall include all genders. The term "**including**" as used herein shall in all instances mean "**including, but not limited to**". The headings in this Agreement are intended solely for convenience of reference and shall be given no effect in the interpretation of this Agreement. This Agreement and any related instruments shall not be construed more strictly against one party than against the other by virtue of the fact that initial drafts may have been prepared by counsel for one of the parties, it being recognized that this Agreement and any related instruments are the product of extensive negotiations between the parties hereto.

12.4 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which will constitute the same Agreement. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages.

12.5 Severability and Waiver. Invalidation of any one Section or provision of this Agreement by judgment or court order shall in no way affect any other Section or provision. Failure of any party to this Agreement to insist on the full performance of any of its provisions by the other party (or parties) shall not constitute a waiver of such performance unless the party failing to insist on full performance of the provision declares in writing signed by it that it is waiving such performance. A waiver of any breach under this Agreement by any party, unless otherwise expressly declared in writing, shall not be a continuing waiver or waiver of any subsequent

breach of the same or other provision of this Agreement. The provisions of this Section shall survive the Closing.

12.6 Governing Law. The laws of the State (without regard to conflicts of law) shall govern the validity, construction, enforcement and interpretation of this Agreement.

12.7 Further Acts. In addition to the acts and deeds recited in this Agreement and contemplated to be performed, executed, and/or delivered under this Agreement, Seller and Buyer agree to perform, execute and/or deliver or cause to be delivered, executed and/or delivered at Closing or after Closing all further acts, deeds, and assurances reasonably necessary to consummate the transactions contemplated hereby.

12.8 Notices. All notices, demands, requests, and other communications required or permitted hereunder shall be in writing. Any notice given by Seller's attorney shall be deemed notice given by Seller. All such notices, demands, requests and other communications (and copies thereof) shall be deemed to be delivered: (a) if sent by messenger, upon personal delivery to the party to whom the notice is directed; (b) if sent by facsimile, on (i) the Business Day sent provided that electronic or telephonic confirmation of receipt from the receiving facsimile machine is received within business hours on that Business Day (unless a different time period is provided herein), or (ii) the next Business Day if sent on a day other than a Business Day and/or said confirmation is received after business hours on the Business Day sent or received on a day other than a Business Day; (c) if sent by email on (i) the Business Day sent so long as such email notice is sent within business hours on that Business Day (unless a different time period is provided here) or (ii) the next Business Day if sent after business hours on the Business Day sent or sent on a day other than a Business Day, and in either case such email notice is followed by notice pursuant to provisions (a), (b) or (d) of this Section or the party to whom such email notice is given acknowledges receipt; or (d) if sent by overnight courier, with request for next Business Day delivery, on the next Business Day after sending; addressed as follows (or to such other address as the parties may specify by notice given pursuant to this Section):

TO SELLER:

c/o LNR Partners, LLC  
1601 Washington Avenue, Suite 700  
Miami Beach, Florida 33139  
Attention: John Mitchell  
Telephone No. 305-695-5253  
Facsimile No. 305-695-5379  
Email Address: [jmitchell@lnrproperty.com](mailto:jmitchell@lnrproperty.com)

WITH A COPY TO:

Bilzin Sumberg Baena Price & Axelrod LLP  
1450 Brickell Avenue, Suite 2300  
Miami, Florida 33131-3456  
Attention: Nikki Nedbor, Esq.  
Telephone No. 305-350-2387  
Facsimile No. 305-351-2244  
Email Address: [nnedbor@bilzin.com](mailto:nnedbor@bilzin.com)

TO BUYER:

City of Avondale  
11465 West Civic Center Drive  
Avondale, Arizona 85323  
Attention: City Manager  
Telephone No. (623) 333-1015  
Facsimile No. (623) 333-0100  
Email Address: [cmclendon@avondale.org](mailto:cmclendon@avondale.org)

WITH A COPY TO:

Gust Rosenfeld P.L.C.  
One East Washington, Suite 1600  
Phoenix, Arizona 85004-2553  
Attention: Andrew J. McGuire  
Telephone No: (602) 257-7664  
Facsimile No: (602) 340-1538  
Email Address: [amcguire@gustllaw.com](mailto:amcguire@gustllaw.com)

12.9 Entire Agreement and Amendment. This Agreement contains the entire understanding between Buyer and Seller with respect to the subject matter hereof. Neither this Agreement nor any provision hereof may be modified, amended, changed, waived, discharged or terminated orally. Any such action may occur only by an instrument in writing signed by the party against whom enforcement of the modification, change, waiver, discharge or termination is sought.

12.10 Recording. This Agreement shall not be recorded.

12.11 Exhibits. The Exhibits that are referenced in and attached to this Agreement are incorporated in, and made a part of, this Agreement for all purposes.

12.12 Time of the Essence. Seller and Buyer expressly agree that time is of the essence with respect to this Agreement. If the final day of any period or any date of performance under this Agreement falls on a date which is not a Business Day, then the final day of the period or the date of performance, as applicable, shall be extended to the next day which is a Business Day.

12.13 No Third Party Beneficiary. This Agreement is solely between Seller and Buyer and no other party shall be entitled to rely upon any provision hereof for any purpose whatsoever.

12.14 Back-Up Contract(s). Buyer understands that Seller may negotiate with other parties, market the Property for sale, including but not limited to marketing through an auction sale, and may enter into back-up contracts for the sale of the Property. Any such back-up contracts, including any contract entered into through an auction sale, will be subject and subordinate to this Agreement so long as this Agreement is in full force and effect and Buyer is not in default hereunder.

12.15 Requisite Senior Management Approval. Prior to execution and delivery of this Agreement by Seller, this Agreement is subject to approval by Seller's senior management.

Neither the submission of any proposal or this Agreement for examination to Buyer, nor any correspondence or course of dealing between Buyer or Seller shall constitute a reservation of or option for the Property or in any manner bind Seller. No contract or obligation on the part of Seller shall arise until this Agreement is approved by Seller's senior management and fully executed and unconditionally delivered by Seller. Notwithstanding anything to the contrary contained in this Agreement, Seller executes and returns this Agreement to Buyer, the requirement for senior management approval shall be deemed satisfied.

12.16 Limitation on Liability. Buyer expressly agrees that the obligations and liabilities of Seller under this Agreement and any document referenced herein shall not constitute personal obligations of the officers, directors, shareholders, employees, agents, representatives, trustees, partners, members, certificateholders or other principals of Seller. Notwithstanding anything to the contrary, Seller's liability, if any, arising in connection with this Agreement or with the Property shall be limited to Seller's interest in the Property for the recovery of any judgment against Seller before Closing and the proceeds of the sale after Closing, and Seller shall not otherwise be personally liable for any such judgment or deficiency after execution thereon. The limitations of liability contained in this paragraph shall apply equally and inure to the benefit of Seller's present and future officers, directors, shareholders, employees, agents, representatives, trustees, partners, members, certificateholders or other principals, and their respective heirs, successors and assigns. The provisions of this Section shall survive termination and Closing.

12.17 Legal Counsel and Joint Authorship. Each of Buyer and Seller has received independent legal advice from attorneys of its choice with respect to the advisability of making and executing this Agreement and the documents which, under the terms of this Agreement, are to be executed and delivered by Seller or Buyer or both at Closing (the "**Closing Documents**") or waived its right to do so. Buyer hereby acknowledges that Seller's counsel is not representing the Buyer or any interests of Buyer in connection with this Agreement or any other matter and Seller hereby acknowledges that Buyer's counsel is not representing the Seller or any interests of Seller in connection with this Agreement or any other matter. In the event of any dispute or controversy regarding authorship of this Agreement or the Closing Documents, Buyer and Seller shall be conclusively deemed to be the joint authors of this Agreement and the Closing Documents and no provision of this Agreement or the Closing Documents shall be interpreted against Buyer or Seller by reason of authorship.

12.18 Prohibited Persons. Neither Buyer nor Seller, nor any of their respective officers, directors, shareholders, partners, members or affiliates (including without limitation indirect holders of equity interests in Buyer and direct holders of equity interests in Seller) is or will be an entity or person (i) that is listed in the Annex to, or is otherwise subject to the provisions of Executive Order 13224 issued on September 24, 2001 ("**EO13224**"), (ii) whose name appears on the United States Treasury Department's Office of Foreign Assets Control ("**OFAC**") most current list of "**Specifically Designated National and Blocked Persons**" (which list may be published from time to time in various mediums including, but not limited to, the OFAC website, <http://www.treas.gov/ofac/t11sdn.pdf>) (iii) who commits, threatens to commit or supports "**terrorism**", as that term is defined in EO3224, (iv) is subject to sanctions of the United States government or is in violation of any federal, state, municipal or local laws, statutes, codes, ordinances, orders, decrees, rules or regulations relating to terrorism or money laundering,

including, without limitation, EO13224 and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, or (v) who is otherwise affiliated with any entity or person listed above (any and all parties or persons described in clauses (i) – (v) above are herein referred to as a "**Prohibited Person**"). Buyer covenants and agrees that neither Buyer nor any of its respective officers, directors, shareholders, partners, members or affiliates (including without limitation indirect holders of equity interests in Buyer) shall (aa) conduct any business, nor engage in any transaction or dealing, with any Prohibited Person, including, but not limited to, the making or receiving of any contribution of funds, goods, or services, to or for the benefit of a Prohibited Person, or (bb) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in EO13224. Seller covenants and agrees that neither Seller nor any of its officers, directors, shareholders, partners, members or affiliates (including without limitation direct holders of equity interests in Seller) shall (aa) conduct any business, nor engage in any transaction or dealing, with any Prohibited Person, including, but not limited to, the making or receiving of any contribution of funds, goods, or services, to or for the benefit of a Prohibited Person, or (bb) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in EO13224. The provisions of this Section shall survive Closing or termination of this Agreement.

12.19 Radon. Radon is a naturally occurring radioactive gas that when accumulated in a building in sufficient quantities may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines may have been found in buildings in the state where the Property is located. Additional information regarding radon and radon testing may be obtained from your county or state health unit. Buyer represents and warrants that it has not relied on the accuracy or completeness of any representations that have been made by the Seller and/or Disclosed Brokers as to the presence of radon and that the Buyer has not relied on the Seller's or Disclosed Brokers' failure to provide information regarding the presence or effects of any radon found on the Property. Real estate brokers and agents are not generally qualified to advise buyers on radon treatment or its health and safety risks.

12.20 Disclosure. Notwithstanding anything to the contrary contained in this Agreement, this Agreement may be disclosed to any board, official, officer, party or person as Buyer or its counsel may determine is necessary, including entry into any public record and disclosure at any public meeting or hearing.

12.21 Public Funds Law. Notwithstanding anything to the contrary contained in this Agreement, nothing herein shall be construed or enforced in a manner that violates applicable Arizona law regarding public funds.

12.22 Cancellation. Notwithstanding anything to the contrary contained in this Agreement, this Agreement may be cancelled by the Buyer pursuant to ARIZ. REV. STAT. § 38-511 at which point, subject to Buyer's compliance with Section 2.6 hereof, the Deposit (less the Independent Consideration and the Reimbursement (as defined below)) shall be returned to Buyer, the Independent Consideration and the Reimbursement shall be delivered to Seller and neither party shall have any further rights or obligations hereunder except with respect to the provisions hereof

which specifically survive termination. Buyer agrees that in the event Buyer elects to terminate this Agreement pursuant to this Section 12.22, Buyer shall reimburse Seller for its costs, expenses and carrying charges for the Property in the amount of \$10,000.00 (the "**Reimbursement**"), which Reimbursement shall be paid from the Deposit.

### **ARTICLE XIII**

#### **ESCROW TERMS**

The Escrow Agent shall hold the Deposit in escrow on the following terms and conditions:

(a) The Escrow Agent shall deliver the Deposit to Seller or Buyer, as the case may be, in accordance with the provisions of this Agreement.

(b) Any notice to or demand upon the Escrow Agent shall be in writing and shall be sufficient only if received by the Escrow Agent within the applicable time periods set forth herein, if any. Notices to or demands upon the Escrow Agent shall be sent in accordance with Section 12.8 hereof, to the address set forth in Section 1.2 of this Agreement. Notices from the Escrow Agent to Seller or Buyer shall be delivered to them in accordance with Section 12.8 of this Agreement.

(c) If the Escrow Agent shall have received notice signed by either party advising that litigation between the parties over entitlement to the Deposit has been commenced, the Escrow Agent shall, on demand of either party, deposit the Deposit with the clerk of the court in which such litigation is pending. If at any time the Escrow Agent is uncertain of its duties hereunder or if the Escrow Agent for any other reason is no longer willing to serve as escrow agent, the Escrow Agent may, on notice to the parties, take such affirmative steps as it may, at its option, elect in order to terminate its duties as the Escrow Agent, including, but not limited to, the deposit of the Deposit with a court of competent jurisdiction and the commencement of an action for interpleader, the reasonable costs of which shall be borne by whichever of the parties is the losing party. Upon the taking by the Escrow Agent of such action described, the Escrow Agent shall be released of and from all liability hereunder as escrow agent.

(d) The Escrow Agent shall not incur any liability in acting upon any signature, notice, demand, request, waiver, consent, receipt or other paper or document believed by the Escrow Agent to be genuine. The Escrow Agent may assume that any person purporting to give it any notice on behalf of any party in accordance with the provisions hereof has been duly authorized to do so, or is otherwise acting or failing to act under this Section except in the case of the Escrow Agent's gross negligence or willful misconduct.

(e) The terms and provisions of this Article shall create no right in any person or entity other than the parties and their respective successors and permitted assigns and no third party shall have the right to enforce or benefit from the terms hereof.

(f) The Escrow Agent has executed this Agreement for the sole purpose of agreeing to act as such in accordance with the terms of this Agreement.

## ARTICLE XIV

### LITIGATION

14.1 Attorneys' Fees; Jurisdiction; Venue. To the extent allowed by law, in the event of any litigation arising out of or under this Agreement and/or out of Buyer's ownership, development or construction upon the Property, the prevailing party shall be entitled to collect from the non-prevailing party reasonable attorneys' fees and costs. Buyer and Seller hereby submit to the jurisdiction of the Civil Courts of the State and the United States District Courts located in the State in respect of any suit or other proceeding brought in connection with or arising out of this Agreement and venue shall be in the County. The provisions of this Section shall survive the Closing.

14.2 WAIVER OF JURY TRIAL. TO THE EXTENT ALLOWED BY LAW, THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY DOCUMENT EXECUTED IN CONNECTION HEREWITH OR RELATED HERETO, OR ANY COURSE OR CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF EITHER PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES TO ENTER INTO THIS TRANSACTION.

**[SIGNATURE PAGE FOLLOWS]**

Buyer and Seller have executed this Agreement as of the Execution Date.

Witnesses:

**SELLER:**

**LBCMT 2007-C3 OFFICE 125, LLC**, an Arizona limited liability company

By: LNR Partners, LLC, a Florida limited liability company, its manager

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

By: \_\_\_\_\_

Name: Steven D. Ferreira

Title: Vice President

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

**[SIGNATURES CONTINUE ON FOLLOWING PAGE]**

Buyer and Seller have executed this Agreement as of the Execution Date.

**BUYER:**

**CITY OF AVONDALE**, an Arizona municipal corporation

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: Charles P. McClendon

Its: City Manager

Attest:

\_\_\_\_\_  
Carmen Martinez, City Clerk

EXECUTION BY ESCROW AGENT

The Escrow Agent executes this Agreement for the purposes of acknowledging its Agreement to serve as escrow agent in accordance with the terms of the Agreement and to acknowledge receipt of the Deposit of \$138,750.00 (if in the form of a check, subject to clearance) from Buyer as the Deposit due thereunder.

ULTRA ESCROW INCORPORATED

By: \_\_\_\_\_  
Cendy Dzandzara, Escrow Officer

Date:

**EXHIBIT A**

**LEGAL DESCRIPTION**

**Lot 3, Avondale Civic Center, according to Book 642 of Maps, Page 7 and Certificate of Correction recorded in Document No. 2004-0119395, records of Maricopa County, Arizona**

## EXHIBIT B

Prepared by and  
Return to:  
Nikki Nedbor, Esq.  
Bilzin Sumberg Baena Price & Axelrod LLP  
1450 Brickell Avenue, Suite 2300  
Miami, FL 33131-3456

### TERMINATION ACKNOWLEDGMENT AGREEMENT

**THE CITY OF AVONDALE**, an Arizona municipal corporation ("**Buyer**"), whose address is 11465 W. Civic Center Drive, Suite 210, Avondale, AZ 85323, and **LBCMT 2007-C3 OFFICE 125, LLC**, an Arizona limited liability company ("**Seller**"), whose address is c/o LNR Partners, LLC, 1601 Washington Avenue, Suite 700, Miami Beach, Florida 33139, execute this Termination Acknowledgment Agreement as of \_\_\_\_\_, 2013.

### RECITALS

A. Seller and Buyer entered into a certain Agreement for Sale and Purchase of Property dated \_\_\_\_\_, 2013 (the "**Contract**") pursuant to which Seller agreed to sell and Buyer agreed to purchase the Property (as such term is defined in the Contract).

B. Seller and Buyer have agreed to terminate the Contract in accordance with the terms thereof.

NOW, THEREFORE, Seller and Buyer agree as follows:

1. Seller and Buyer agree that the Contract is terminated and of no further force and effect. Neither party shall have any further rights or obligations thereunder, except for any obligations that by the express terms of the Contract are intended to survive termination of the Contract.

2. Buyer warrants and represents that it has previously or simultaneously herewith delivered to Seller all of Buyer's Due Diligence Reports (as such term is defined in the Contract).

3. Buyer hereby acknowledges and agrees that it has no right, title, claim or interest in and to the Property.

4. By Buyer's and Seller's execution of this Termination Acknowledgment Agreement and fulfillment of the statement in Paragraph 2 hereof, it shall be deemed that Seller and Buyer hereby direct Ultra Escrow Incorporated to immediately return the Deposit less the Independent Consideration (as such terms are defined in the Contract), being held by it in its capacity as escrow agent, to Buyer and to deliver the Independent Consideration to Seller.

**[SIGNATURE PAGE FOLLOWS]**



Seller has executed and delivered this Termination Acknowledgment Agreement as of the date set forth above.

**LBCMT 2007-C3 OFFICE 125, LLC**, an Arizona limited liability company

By: LNR Partners, LLC, a Florida limited liability company, its manager

By: \_\_\_\_\_  
Steven D. Ferreira  
Vice President

STATE OF FLORIDA                    )  
  ) SS.  
COUNTY OF MIAMI-DADE        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2013 by Steven D. Ferreira, as Vice President of LNR Partners, LLC, a Florida limited liability company, as manager of **LBCMT 2007-C3 OFFICE 125, LLC**, an Arizona limited liability company, on behalf of the company. He is personally known to me \_\_\_ or \_\_\_ has produced a driver's license as identification.

\_\_\_\_\_  
Notary Public  
Print Name: \_\_\_\_\_  
Serial No. (if any): \_\_\_\_\_

**EXHIBIT C**

When Recorded Mail To:

City Clerk  
City of Avondale  
11465 West Civic Center Drive, Suite 200  
Avondale, Arizona 85323

EXEMPT FROM AFFIDAVIT OF PROPERTY VALUE PURSUANT TO ARIZ. REV. STAT. § 11-1134(A)(3).

**SPECIAL WARRANTY DEED**

**THIS INDENTURE**, made as of \_\_\_\_\_, 2013 between **LBCMT 2007-C3 OFFICE 125**, an Arizona limited liability company (“**Grantor**”), whose address is c/o LNR Partners, LLC, 1601 Washington Avenue, Suite 700, Miami Beach, Florida 33139, in favor of **THE CITY OF AVONDALE**, an Arizona municipal corporation, (“**Grantee**”), whose address is 11465 West Civic Center Drive, Avondale, Arizona 85323, Attention: City Manager.

W I T N E S S E T H   T H A T :

Grantor, for and in consideration of the sum of Ten and No/100 U.S. Dollars (\$10.00), lawful money of the United States of America, to it in hand paid by Grantee, at or before the unsealing and delivery of these presents, the receipt of which is hereby acknowledged, has granted, bargained, sold, aliened, remised, released, conveyed and confirmed and by these presents does grant, bargain, sell, alien, remise, release, convey and confirm unto Grantee and its successors and assigns forever, the parcel of land, situate, lying and being in the County of Maricopa, State of Arizona, as more particularly described on the attached **Exhibit A** (the “**Property**”), with the buildings and improvements thereon erected:

Subject however, to: [TO BE DETERMINED].

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any way appertaining.

TO HAVE AND TO HOLD the same in fee simple forever.

AND Grantor hereby specially warrants the title to the Property and will defend the same against the lawful claims of any persons claiming by, through or under Grantor, but against none other, subject to any matters set forth above.

**[SIGNATURE PAGE FOLLOWS]**

Grantor has executed and delivered this Indenture as of the date first above written.

**LBCMT 2007-C3 OFFICE 125, LLC**, an Arizona limited liability company

By: LNR Partners, LLC, a Florida limited liability company, its manager

By: \_\_\_\_\_  
Steven D. Ferreira  
Vice President

STATE OF FLORIDA                    )  
  ) SS.  
COUNTY OF MIAMI-DADE        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2013 by Steven D. Ferreira, as Vice President of LNR Partners, LLC, a Florida limited liability company, as manager of **LBCMT 2007-C3 OFFICE 125, LLC**, an Arizona limited liability company, on behalf of the company. He is personally known to me \_\_\_ or \_\_\_ has produced a driver's license as identification.

\_\_\_\_\_  
Notary Public  
Print Name: \_\_\_\_\_  
Serial No. (if any): \_\_\_\_\_

**EXHIBIT D**

**AFFIDAVIT**

STATE OF FLORIDA                    )  
  )  
COUNTY OF MIAMI-DADE         )         SS:

BEFORE ME, the undersigned authority, personally appeared Steven D. Ferreira ("**Affiant**") as Vice President of LNR Partners, LLC, a Florida limited liability company, as manager of **LBCMT 2007-C3 OFFICE 125, LLC**, an Arizona limited liability company ("**Seller**"), who being by me first duly sworn, deposes and says:

1. Seller is this day conveying its rights, title and interest in and to the real property more particularly described on the attached **Exhibit A** hereto (the "**Property**") **THE CITY OF AVONDALE**, an Arizona municipal corporation ("**Buyer**").

2. There have been no improvements, alterations or repairs to the Property authorized by Seller for which the costs thereof remain unpaid; there are no construction, materialmen's or laborers' liens against the Property arising through work performed by or for Seller.

3. There are no parties in possession of the Property other than Seller and the tenants set forth on the attached list of tenants.

4. There are no matters pending by or against Seller that could give rise to a lien that could attach to the Property between \_\_\_\_\_, 2013 at \_\_\_\_\_.m., the date of the last certification (the "**Last Certification Date**") of \_\_\_\_\_ Title Insurance Company (the "**Title Company**") Title Insurance Commitment No. \_\_\_\_\_ (the "**Commitment**") and the date of the recording of the deed (the "**Deed**") from Seller to Buyer. Seller has not executed, and will not execute, any instrument that would adversely affect the title to the Property except as contained in the Commitment. Seller will indemnify and hold Buyer and the Title Company harmless from all liens or title defects created by or against Seller subsequent to the Last Certification Date and prior to recordation of the Deed (provided, however, that Buyer promptly instructs Ultra Escrow Incorporated (the "**Escrow Agent**") on behalf of the Title Company to record the Deed and the Escrow Agent promptly records the Deed).

5. Under penalties of perjury Affiant declares that he has examined this certification and to the best of his knowledge and belief it is true and complete.

**(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)**

FURTHER AFFIANT SAITH NOT.

\_\_\_\_\_  
Steven D. Ferreira, as Vice President of LNR Partners, LLC, a Florida limited liability company, as manager of **LBCMT 2007-C3 OFFICE 125, LLC**, an Arizona limited liability company

SWORN TO AND SUBSCRIBED before me this \_\_\_\_ day of \_\_\_\_\_, 2013, by Steven D. Ferreira, as Vice President of LNR Partners, LLC, a Florida limited liability company, as manager of **LBCMT 2007-C3 OFFICE 125, LLC**, an Arizona limited liability company, on behalf of the company. He is personally known to me \_\_\_ or \_\_\_ has produced a driver's license as identification.

\_\_\_\_\_  
Notary Public  
Print Name: \_\_\_\_\_  
Serial No. (if any): \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**EXHIBIT E**

**BILL OF SALE**

**THIS BILL OF SALE**, dated as of \_\_\_\_\_, 2013 is executed by **LBCMT 2007-C3 OFFICE 125, LLC**, an Arizona limited liability company ("**Assignor**"), in accordance with the Agreement for Sale and Purchase of Property dated \_\_\_\_\_, 2013. In consideration of the sum of Ten Dollars (\$10.00) (the sufficiency and receipt of which are hereby acknowledged), Assignor does hereby grant, bargain, sell, convey, assign, transfer, set over and deliver (collectively, "**assign**") to **THE CITY OF AVONDALE**, an Arizona municipal corporation ("**Assignee**"), all of Assignor's right, title and interest in and to all of the furniture, furnishings, fixtures, equipment and other tangible personal property, that is now affixed to and/or located on the Real Property described on **Exhibit A** attached hereto and used in connection with the management, operation, or repair of that Real Property (collectively, "**Personal Property**"). The term "**Personal Property**" shall not include insurance policies, utility deposits or bank accounts.

TO HAVE AND TO HOLD the Personal Property unto Assignee and Assignee's heirs, legal representatives, successors and assigns forever.

THE PERSONAL PROPERTY IS BEING ASSIGNED "**AS IS**", "**WHERE IS**", AND "**WITH ALL FAULTS**" AS OF THE DATE OF THIS BILL OF SALE, WITHOUT ANY REPRESENTATION OR WARRANTY WHATSOEVER AS TO ITS CONDITION, FITNESS FOR ANY PARTICULAR PURPOSE, MERCHANTABILITY OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED. ASSIGNEE IS HEREBY ACQUIRING THE PERSONAL PROPERTY BASED SOLELY UPON ASSIGNEE'S OWN INDEPENDENT INVESTIGATIONS AND INSPECTIONS OF THAT PROPERTY AND NOT IN RELIANCE ON ANY INFORMATION PROVIDED BY ASSIGNOR OR ASSIGNOR'S AGENTS OR CONTRACTORS. ASSIGNOR HAS MADE NO AGREEMENT TO ALTER, REPAIR OR IMPROVE ANY OF THE PERSONAL PROPERTY. ASSIGNOR SPECIFICALLY DISCLAIMS ANY WARRANTY, GUARANTY OR REPRESENTATION, ORAL OR WRITTEN, PAST OR PRESENT, EXPRESS OR IMPLIED, CONCERNING THE PERSONAL PROPERTY OR ASSIGNOR'S TITLE THERETO.

**(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)**

Assignor has executed and delivered this Bill of Sale as of the date first above written.

**LBCMT 2007-C3 OFFICE 125, LLC**, an Arizona  
liability company

By: LNR Partners, LLC, a Florida limited  
liability company, its manager

By: \_\_\_\_\_  
Steven D. Ferreira  
Vice President

**EXHIBIT F**

**ASSIGNMENT AND ASSUMPTION AGREEMENT**

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT, executed and delivered as of \_\_\_\_\_, 2013, by and between **LBCMT 2007-C3 OFFICE 125, LLC**, an Arizona limited liability company ("**Assignor**") and (b) **THE CITY OF AVONDALE**, an Arizona municipal corporation ("**Assignee**").

RECITALS:

A. Assignor and Assignee entered into that certain Agreement for Sale and Purchase of Property ("**Agreement**") dated \_\_\_\_\_, 2013, for the sale and purchase of certain "**Property**" consisting of "**Real Property**" (as more particularly described in **Exhibit A** attached hereto), "**Personal Property**" and "**Intangible Property**" (as more particularly described in this Assignment and Assumption Agreement), as said terms are defined in the Agreement.

B. Assignor desires to assign, transfer, set over and deliver to Assignee all of Assignor's right, title and interest in and to the Intangible Property as hereinafter provided.

C. Assignee desires to assume the duties and obligations of Assignor with respect to the Intangible Property.

NOW, THEREFORE, in accordance with the Agreement and in consideration of the sum of Ten Dollars (\$10.00), the sufficiency and receipt of which are hereby acknowledged, the parties do hereby covenant and agree as follows and take the following actions:

1. Assignor does hereby assign, transfer, set over and deliver unto Assignee all of the Assignor's right, title and interest, if any, in and to the following property to the extent the same is transferable by Assignor (collectively, "**Intangible Property**"):

(a) any and all leases, tenancies, licenses and other rights of occupancy or use of or for any portion of the Real Property or the Personal Property (including all amendments and renewals thereof), in effect as of the date of this Assignment and Assumption Agreement (collectively, "**Leases**");

(b) [INTENTIONALLY OMITTED];

(c) any and all licenses, permits, authorizations, certificates of occupancy and other approvals that are in effect for the current use and operation of the Property (collectively, "**Permits**");

(d) any and all guaranties, warranties, telephone exchange numbers, architectural or engineering plans and specifications, and development rights that exist as of the date of this Assignment and Assumption Agreement and that relate to the Real Property or the Personal Property, if any, but excluding any rights and/or claims, choses in action and/or

judgments, settlements, proceeds or other rights to payment and/or pending or anticipated actions of Assignor and/or Assignor's affiliates (i) against any former tenants (and/or guarantors of the leases entered into by such tenants) at the Property and from and/or against any former owners of the Property and/or any former borrowers or guarantors under, arising from or related to any loan held by Assignor and/or Assignor's affiliates; and (ii) against any insurer or any other party in connection with or relating to any Pre-Existing Insurance Claims or any Proceeds from Pre-Existing Insurance Claims (collectively, "**General Intangibles**"); and

(e) any and all rights to the name of the improvements upon the Real Property.

2. THE INTANGIBLE PROPERTY IS BEING ASSIGNED "**AS IS**", "**WHERE IS**", AND "**WITH ALL FAULTS**" AS OF THE DATE OF THIS ASSIGNMENT AND ASSUMPTION AGREEMENT, WITHOUT ANY REPRESENTATION OR WARRANTY WHATSOEVER AS TO ITS CONDITION, FITNESS FOR ANY PARTICULAR PURPOSE, MERCHANTABILITY OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED. ASSIGNEE IS HEREBY ACQUIRING THE INTANGIBLE PROPERTY BASED SOLELY UPON ASSIGNEE'S OWN INDEPENDENT INVESTIGATIONS AND INSPECTIONS OF THAT PROPERTY AND NOT IN RELIANCE ON ANY INFORMATION PROVIDED BY ASSIGNOR OR ASSIGNOR'S AGENTS OR CONTRACTORS. ASSIGNOR SPECIFICALLY DISCLAIMS ANY WARRANTY, GUARANTY OR REPRESENTATION, ORAL OR WRITTEN, PAST OR PRESENT, EXPRESS OR IMPLIED, CONCERNING THE INTANGIBLE PROPERTY OR ASSIGNOR'S TITLE THERETO.

3. Assignee hereby accepts the foregoing assignment of the Intangible Property and hereby assumes all duties and obligations of Assignor under the Leases, Permits and General Intangibles assigned herein. Assignor shall defend, indemnify and hold harmless Assignee from and against any and all Claims asserted against or incurred by Assignee as a result of any acts or omissions, from and before the date of this Assignment and Assumption Agreement, in connection with the Leases, Permits and General Intangibles assigned herein. Assignee shall defend, indemnify and hold harmless Assignor from and against any and all Claims asserted against or incurred by Assignor as a result of any acts or omissions, from and after the date of this Assignment and Assumption Agreement, in connection with the Leases, Permits and General Intangibles assigned herein. "**Claims**" means any and all claims, demands, causes of action, whether administrative or judicial, losses, costs (including any and all reasonable attorneys' fees, court costs, and reasonable costs of investigation, litigation, and settlement), expenses, judgments, compensation, fees, and/or damages, of any kind whatsoever, whether direct or indirect, known or unknown, fixed or contingent, joint or several, criminal or civil, or in law or in equity.

4. This Assignment and Assumption Agreement shall be (a) binding upon, and inure to the benefit of, the parties to this Assignment and Assumption Agreement and their respective heirs, legal representatives, successors and assigns, and (b) construed in accordance with the laws of the State where the Real Property is located, without regard to the application of choice of law principles.

5. The parties may execute this Assignment and Assumption Agreement in one or more identical counterparts, all of which when taken together will constitute one and the same instrument. If so executed, each of such counterparts is to be deemed an original for all purposes, and all such counterparts shall, collectively, constitute one agreement, but in making proof of this Assignment, it shall not be necessary to produce or account for more than one such counterpart.

**(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)**

The parties have executed and delivered this Assignment and Assumption Agreement as of the date first above written.

Witnesses:

**LBCMT 2007-C3 OFFICE 125, LLC**, an Arizona limited liability company

By: LNR Partners, LLC, a Florida limited liability company, its manager

By: \_\_\_\_\_  
Steven D. Ferreira  
Vice President

**CITY OF AVONDALE**, an Arizona municipal corporation

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: City Manager

**EXHIBIT G**

**NOTICE TO TENANT**

\_\_\_\_\_, 2013

**RE: AVONDALE CORPORATE CENTER  
125 SOUTH AVONDALE BOULEVARD  
AVONDALE, AZ 85323**

Dear Tenant:

Please be advised that on this date **LBCMT 2007-C3 OFFICE 125, LLC**, an Arizona limited liability company (the "**Prior Owner**"), has transferred ownership of the above referenced property to **THE CITY OF AVONDALE**, an Arizona municipal corporation (the "**New Owner**"). All correspondence regarding your lease should hereafter be sent to the New Owner at 11465 West Civic Center Drive, Avondale, Arizona 85323, Attention: City Manager. The New Owner has assumed all obligations of the landlord under your lease from and after the above date. Any security deposits specified in your lease and not applied by the landlord under your lease have been delivered to the New Owner. Please send all further rental payments under the lease to the New Owner to the address designated above for receipt of such payments, unless otherwise directed by the New Owner.

Very truly yours,

**LBCMT 2007-C3 OFFICE 125, LLC**, an Arizona limited liability company

By: LNR Partners, LLC, a Florida limited liability company, its manager

By: \_\_\_\_\_

Name: Steven D. Ferreira

Title: Vice President

**EXHIBIT H**

[INTENTIONALLY OMITTED]

**EXHIBIT I**

**CERTIFICATE OF NON-FOREIGN STATUS**

STATE OF FLORIDA                    )  
  )        SS:  
COUNTY OF MIAMI-DADE        )

Section 1445 of the Internal Revenue Code (the "**Code**") provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. For U.S. tax purposes (including Code Section 1445), the undersigned "**Transferor**", which is the owner, directly or indirectly of all of the general and limited partnership or membership interests of **LBCMT 2007-C3 OFFICE 125, LLC**, an Arizona limited liability company, a disregarded entity (which has legal title to a U.S. real property interest under local law), will be the actual transferor of the property for U.S. tax purposes and not the disregarded entity. To inform **THE CITY OF AVONDALE**, an Arizona municipal corporation ("**Transferee**"), that withholding of tax is not required upon the disposition of a U.S. real property interest by Transferor, the undersigned hereby certifies as follows:

1. Transferor is not a foreign corporation, foreign partnership, foreign trust or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations).
2. Transferor's U.S. employer identification number is: #\_\_\_\_\_.
3. Transferor's office address is c/o LNR Partners, LLC, 1601 Washington Avenue, Suite 700, Miami Beach, Florida 33139.
4. Transferor is not a disregarded entity as defined in Treasury Regulations Section 1.1445-2(b)(2)(iii).

Transferor understands that this certification may be disclosed to the Internal Revenue Service by the Transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury, the undersigned, in the capacity set forth below, hereby declares that he has examined this certification and to the best of his knowledge and belief it is true, correct, and complete, and the undersigned further declares that he has authority to sign this document in such capacity.

Dated: As of \_\_\_\_\_, 2013

**[SIGNATURE PAGE FOLLOWS]**

EXECUTED to be effective as of the date set forth above.

**TRANSFEROR**

**U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR THE REGISTERED HOLDERS OF LB COMMERCIAL MORTGAGE TRUST 2007-C3, COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-C3**

By: LNR Partners, LLC, a Florida limited liability company, successor by statutory conversion to LNR Partners, Inc., a Florida corporation, its attorney-in-fact

By: \_\_\_\_\_  
Name: Steven D. Ferreira  
Title: Vice President

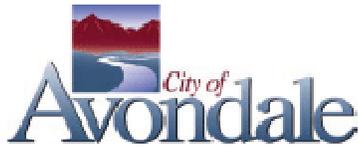
STATE OF FLORIDA                    )  
  )  
  )     SS:  
COUNTY OF MIAMI-DADE         )

This instrument was acknowledged before me, a notary public this \_\_\_ day of \_\_\_\_\_, 2013, by Steven D. Ferreira, as Vice President of LNR Partners, LLC, a Florida limited liability company, successor by statutory conversion to LNR Partners, Inc., a Florida corporation, as attorney-in-fact for **U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR THE REGISTERED HOLDERS OF LB COMMERCIAL MORTGAGE TRUST 2007-C3, COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-C3**, on behalf of the trust. He is personally known to me \_\_\_ or \_\_\_ has produced a driver's license as identification.

\_\_\_\_\_  
Notary Public  
Print Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**EXHIBIT J**

[INTENTIONALLY OMITTED]



# DEVELOPMENT SERVICES

**SUBJECT:**

Final Plat – Hill Tract Estates Replat (PL-13-0003)

**MEETING DATE:**

August 12, 2013

**TO:** Mayor and Council

**FROM:** Tracy Stevens, Acting Development and Engineering Services Director (623) 333-4012

**THROUGH:** Charlie McClendon, City Manager (623) 333-1015

---

**REQUEST:** Approval of a replat of the Hill Tract Estates subdivision that reconfigures three existing parcels into six new parcels, dedicates street right-of-way for Hill Drive, 3rd Drive, and 4th Drive and dedicates various easements for utilities, access, and drainage. City Council will take appropriate action.

**PARCEL SIZE:** Approximately 0.75 gross acres

**LOCATION:** Hill Drive, west of Fifth Street (Exhibits A and B)

**APPLICANT:** City of Avondale – Neighborhood and Family Services Department

**OWNER:** City of Avondale

**BACKGROUND:**

The subject property was incorporated as part of the City of Avondale's original town site on December 16, 1946. Upon adoption of the City's new zoning map in 1990, the property was zoned R-3 (Multi-Family Residential). The property remains zoned R-3, which allows for the development of both single-family residences and multi-family housing. The subject property had been previously developed with one-story apartment buildings that, over time, fell into disrepair and caused crime and blight issues for the surrounding neighborhood. Using federal Neighborhood Stabilization Program funds, the City acquired the property, demolished the apartment buildings, and designed and constructed four single family residences, with two additional residences planned for the rear (south end) of the property. The new residential development is called "Legacy Avondale". A replat of the Hill Tract Estate Subdivision, to create the new lots and dedicate all necessary rights-of-way and easements, is required before the Legacy Avondale residences can be sold.

**SUMMARY OF REQUEST:**

1. This is a request for approval of a replat of the Hill Tract Estates subdivision related to the City's Legacy Avondale new residential project. Four of the planned six residences have been constructed; Final Plat approval is required before those residences can be sold.
2. The property subject to the plat is currently divided into three parcels. The proposed replat reconfigures and divides those three "parent" parcels into six new lots. The new lots range in area from 2,636 square feet to 3,348 square feet.
3. The replat dedicates 20' of right-of-way for two new public streets, 3rd Drive and 4th Drive, that are needed to provide vehicular access to the garages of the housing units. Additionally, the Replat dedicates the portion of Hill Drive east of the property that was acquired and constructed in 2010 but never dedicated. All of the required street improvements have already been completed.
4. The replat creates a 3,876 square foot tract ("Tract A") north of Hill Drive, east of the property. This tract is the excess property left over from when the City required the necessary Hill Drive

right-of-way.

5. The proposed replat dedicates utility, drainage, and ingress/egress easements required for the property to develop under City Engineering Department standards.

**PARTICIPATION:**

Public notification is not required for Final Plat applications.

**PLANNING COMMISSION ACTION:**

The Planning Commission does not review Final Plat applications.

**ANALYSIS:**

All right-of-way, tracts, and easements being dedicated by the proposed Final Plat are at the request of the City Engineer in accordance with City policies intended to facilitate orderly development and provision of City services. All lot lines proposed are necessary to accommodate the individual sale of Legacy Avondale residences. Additionally, the Final Plat has been reviewed by the City's Registered Land Surveyor and the document has been confirmed as accurate.

**FINDINGS:**

The proposed request complies with the City of Avondale Subdivision Regulations, Transportation Plan, and the General Engineering Requirements Manual.

**RECOMMENDATION:**

Staff recommends that the City Council **APPROVE** application PL-13-0003 for replat of the Hill Tract Estates subdivision to reconfigure three existing parcels into six new parcels, dedicate right-of-way for Hill Drive, 3rd Drive, and 4th Drive, and dedicate easements for drainage, utilities, and access related to the City's Legacy Avondale housing development and authorize the Mayor or City Manager and City Clerk to execute all the necessary documents.

**PROPOSED MOTION:**

I move that the City Council **APPROVE** application PL-13-0003, a request for approval of a replat of the Hill Tract Estates Subdivision.

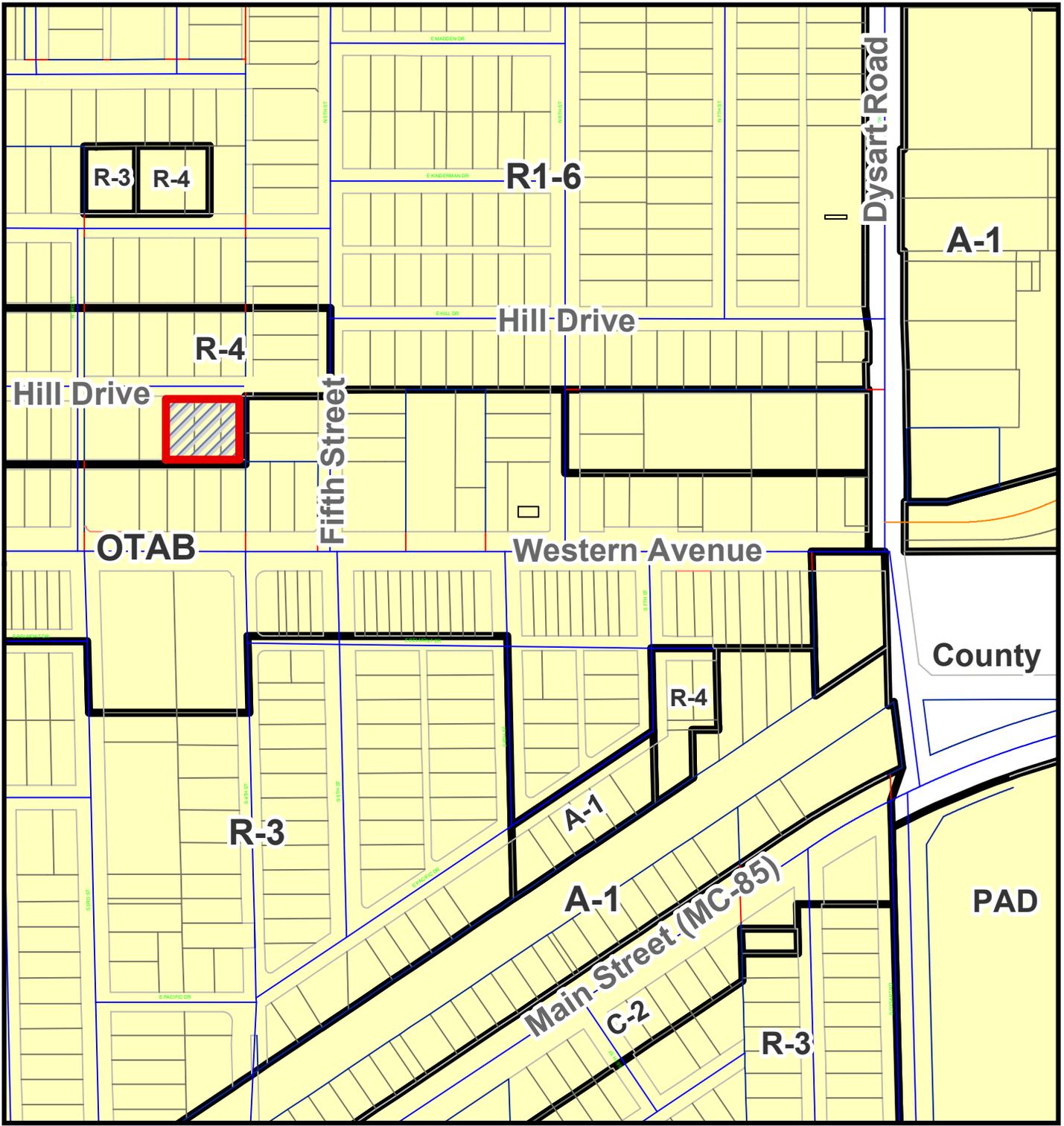
**ATTACHMENTS:**

Click to download

- [Exhibit A - Zoning Vicinity Map](#)
- [Exhibit B - Aerial Photograph](#)
- [Exhibit C - Proposed Replat](#)

**PROJECT MANAGER:**

Ken Galica, Planner II (623) 333-4019

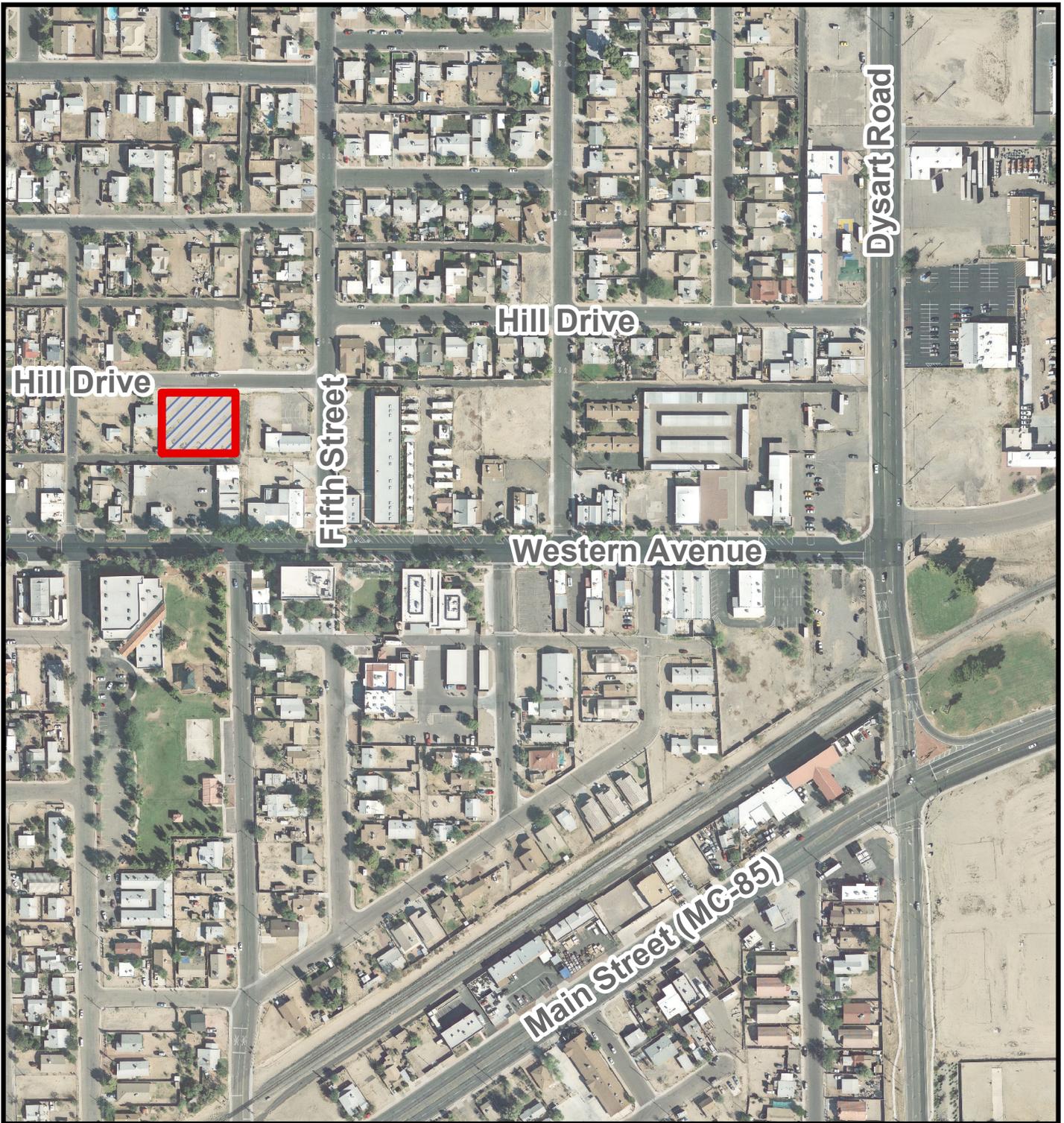


### Zoning Vicinity Map



Subject Property





**Aerial Photograph**

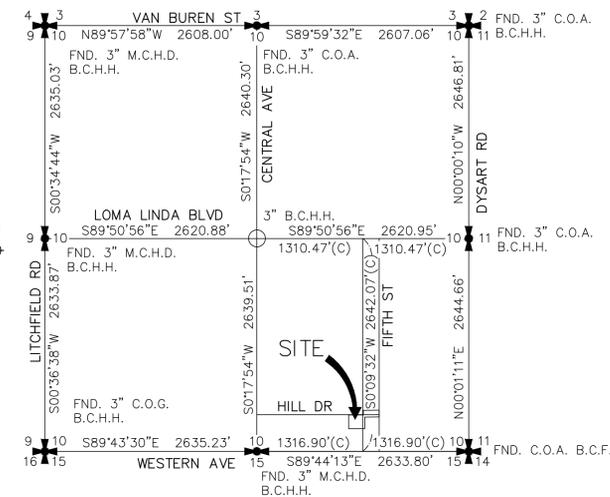


**Subject Property**

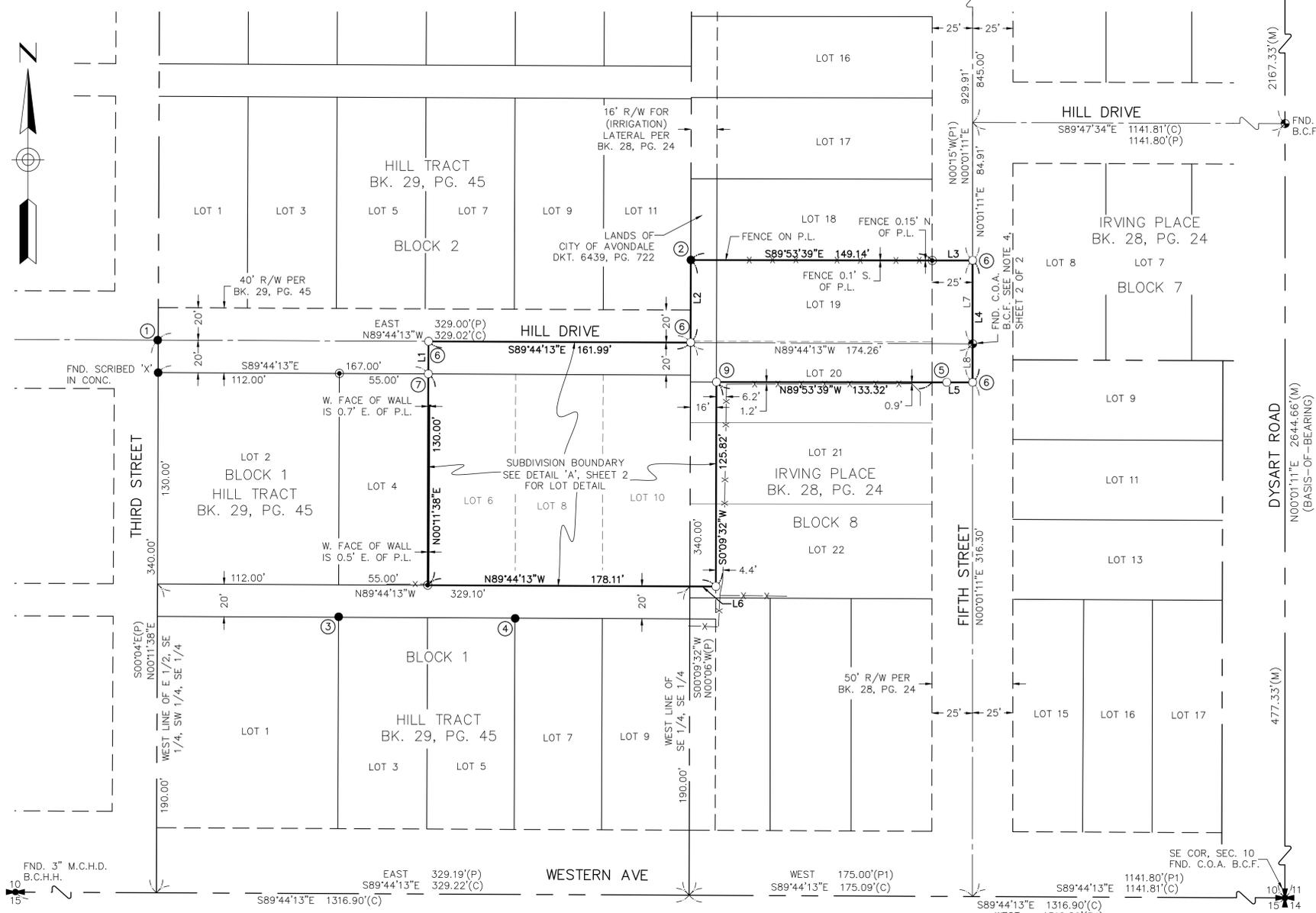


# "HILL TRACT ESTATES"

A REPLAT OF LOTS 6, 8 & 10, BLOCK 1, "HILL TRACT", BK. 29, PG. 45, MCR, & LOT 19, THE N. 1/2 OF LOT 20, & PORTIONS OF LOTS 21 & 22, BLOCK 8, "IRVING PLACE", BK. 28, PG. 24, MCR  
 LOCATED IN THE SOUTHEAST QUARTER OF SECTION 10, TOWNSHIP 1 NORTH, RANGE 1 WEST OF THE GILA AND SALT RIVER MERIDIAN, CITY OF AVONDALE, MARICOPA COUNTY, ARIZONA



VICINITY MAP  
 SECTION 10, T.1N., R.1W., G&SRM  
 N.T.S.



- GENERAL NOTES:**
- 1) ALL LANDSCAPING WITHIN ADJACENT PUBLIC RIGHT-OF-WAY IS TO BE MAINTAINED BY ADJACENT LOT OWNER.
  - 2) ALL UTILITY AND PUBLIC SERVICE EASEMENTS, INCLUDING ANY LIMITATIONS OF EASEMENTS; AND CONSTRUCTION WITHIN SUCH EASEMENTS SHALL BE LIMITED TO UTILITIES, LANDSCAPING, AND WOOD, WIRE OR REMOVABLE SECTION TYPE FENCES.
  - 3) ALL EXISTING OVERHEAD UTILITIES SHALL BE INSTALLED UNDERGROUND IN ACCORDANCE WITH CITY OF AVONDALE MUNICIPAL CODE AND AS REQUIRED BY THE ARIZONA CORPORATION COMMISSION.
  - 4) NO ALTERATIONS SHALL BE MADE TO THE STORM WATER RETENTION AREAS AND APPROVED OR EXISTING CONVEYANCE PATTERNS THAT ARE A PART OF THESE PREMISES WITHOUT WRITTEN APPROVAL BY THE CITY OF AVONDALE.
  - 5) NO STRUCTURES SHALL BE CONSTRUCTED IN OR ACROSS NOR SHALL OTHER IMPROVEMENTS OR ALTERATIONS BE MADE TO THE DRAINAGE FACILITIES THAT ARE A PART OF THIS SUBDIVISION WITHOUT WRITTEN AUTHORIZATION BY THE CITY OF AVONDALE.
  - 6) NO WALLS/FENCES SHALL BE BUILT WITHOUT PRIOR CITY OF AVONDALE APPROVAL.
  - 7) THE AREA PLATTED HEREON LIES WITHIN THE DOMESTIC WATER SERVICES AREAS OF THE CITY OF AVONDALE WHICH IS DESIGNATED AS HAVING AN ASSURED WATER SUPPLY PURSUANT TO SECTION 45-576 ARIZONA REVISED STATUTES.
  - 8) TRACT 'A' IS FOR DRAINAGE AND RETENTION TO BE MAINTAINED BY THE CITY OF AVONDALE.

**PARENT PARCEL LEGAL DESCRIPTION:**  
 LOTS 6, 8 & 10, BLOCK 1, HILL TRACT, ACCORDING TO BOOK 29 OF MAPS, PAGE 45, RECORDS OF MARICOPA COUNTY, ARIZONA; AND, TOGETHER WITH LOT 19, THE NORTH HALF OF LOT 20, AND THE WEST 16.00 FEET OF LOTS 21 AND 22, BLOCK 8, IRVING PLACE, ACCORDING TO BOOK 28 OF MAPS, PAGE 24, RECORDS OF MARICOPA COUNTY, ARIZONA, LYING NORTH OF THE EASTERLY PROLONGATION OF THE SOUTH LINE OF LOT 10, BLOCK 1, HILL TRACT, ACCORDING TO BOOK 29 OF MAPS, PAGE 45, RECORDS OF MARICOPA COUNTY, ARIZONA.

**BENCHMARK:**  
 A 3" CITY OF AVONDALE BRASS CAP IN HANDHOLE MARKING THE EAST QUARTER CORNER OF SEC. 10, T.1N., R.1W., G&SRM, AND HAVING AN ELEVATION OF 979.81 IFT (NAVD88) AS SHOWN ON SURVEY REFERENCE 1 (CORNER 54037-1).

**FLOOD ZONE NOTE:**  
 BY GRAPHIC PLOTTING ONLY, THE SUBJECT PROPERTY LIES WITHIN SHADED ZONE 'X' (AREAS OF 0.2% ANNUAL CHANCE FLOOD; AREAS OF 1% ANNUAL CHANCE FLOOD WITH AVERAGE DEPTHS OF LESS THAN 1 FOOT OR WITH DRAINAGE AREA LESS THAN 1 SQUARE MILE; AND AREAS PROTECTED BY LEVEES FROM 1% ANNUAL CHANCE FLOOD) OF COMMUNITY NUMBER 040038, PANEL 2090 OF 4350, FIRM MAP NUMBER 04013C2090H, REVISED SEPTEMBER 30, 2005.

**DEDICATION:**  
 KNOW ALL MEN BY THESE PRESENTS: THAT CITY OF AVONDALE, AS OWNER, HAS SUBDIVIDED UNDER THE NAME "HILL TRACT ESTATES", A REPLAT OF LOTS 6, 8 AND 10, BLOCK 1, HILL TRACT, AS RECORDED IN BOOK 29, PAGE 13, MARICOPA COUNTY RECORDS, AND LOT 19, THE NORTH HALF OF LOT 20, AND PORTIONS OF LOTS 21 AND 22, BLOCK 8, IRVING PLACE, AS RECORDED IN BOOK 28, PAGE 24, MARICOPA COUNTY RECORDS, SITUATE IN THE SOUTHEAST QUARTER OF SECTION 10, TOWNSHIP 1 NORTH, RANGE 1 WEST, OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, AS SHOWN AND PLATTED HEREON AND DOES HEREBY PUBLISH THIS PLAT AS AND FOR THE PLAT OF "HILL TRACT ESTATES" AND DECLARES THAT THIS PLAT SETS FOR THE LOCATION AND GIVES THE DIMENSIONS OF EACH LOT, STREET, TRACT AND EASEMENT CONSTITUTING SAME, AND THAT EACH LOT, STREET AND TRACT SHALL BE KNOWN BY THE NUMBER, NAME AND LETTER, RESPECTIVELY, GIVEN TO EACH AS SHOWN ON THIS PLAT.

HILL DRIVE, 3RD DRIVE AND 4TH DRIVE ARE HEREBY DECLARED AS PUBLIC RIGHT-OF-WAY.  
 EASEMENTS ARE DEDICATED FOR THE PURPOSES SHOWN.  
 IN WITNESS WHEREOF, CITY OF AVONDALE, AS OWNER, HAS HEREUNDER CAUSED ITS NAME TO BE AFFIXED BY SIGNATURE,  
 THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 201\_\_.  
 BY: \_\_\_\_\_  
 ITS: MAYOR

**ACKNOWLEDGMENT:**  
 STATE OF ARIZONA } S.S.  
 COUNTY OF MARICOPA }  
 BEFORE ME, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 201\_\_, MARIE LOPEZ ROGERS PERSONALLY APPEARED BEFORE ME, THE UNDERSIGNED NOTARY PUBLIC, WHO ACKNOWLEDGED HERSELF TO BE THE MAYOR OF THE CITY OF AVONDALE, A MUNICIPAL CORPORATION, THE LEGAL OWNER OF THE PROPERTY PLATTED HEREON, AND ACKNOWLEDGE THAT SHE EXECUTED THIS INSTRUMENT FOR THE PURPOSES HEREIN CONTAINED.  
 IN WITNESS WHEREOF, I HERETO SET MY HAND AND OFFICIAL SEAL.

NOTARY PUBLIC \_\_\_\_\_ DATE \_\_\_\_\_

**APPROVALS:**  
 APPROVED BY THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 201\_\_.

MAYOR \_\_\_\_\_ DATE \_\_\_\_\_  
 ATTEST, CITY CLERK \_\_\_\_\_ DATE \_\_\_\_\_  
 CITY ENGINEER \_\_\_\_\_ DATE \_\_\_\_\_

**SURVEYOR:**  
 BRETT R. FLIPPO, RLS  
 STRAND ASSOCIATES, INC.  
 4602 E ELWOOD ST, STE 16  
 PHOENIX, ARIZONA 85040  
 TELEPHONE: 602-437-3733

**CIVIL ENGINEER:**  
 BAIRD H. FULLERTON, P.E.  
 STRAND ASSOCIATES, INC.  
 4602 E ELWOOD ST, STE 16  
 PHOENIX, ARIZONA 85040  
 TELEPHONE: 602-437-3733

**DEVELOPER:**  
 CITY OF AVONDALE  
 NEIGHBORHOOD AND FAMILY SERVICES  
 ERNESTO FONSECA  
 TELEPHONE: 623-333-2725

**SURVEYOR'S CERTIFICATION:**  
 THIS IS TO CERTIFY THAT THIS MAP AND THE SURVEY ON WHICH IT IS BASED WERE MADE IN ACCORDANCE WITH THE "ARIZONA BOUNDARY MINIMUM STANDARDS" ADOPTED IN FEBRUARY, 2002, AND THAT THE SURVEY SHOWN HEREON IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND WAS SURVEYED AND DRAWN UNDER MY DIRECTION IN THE MONTH OF JUNE 2013.  
 \_\_\_\_\_ DATE 06/13/2013  
 BRETT R. FLIPPO, RLS REG. #48510



NO.	#	DATE	W/A/X

**"HILL TRACT ESTATES"**  
 A REPLAT OF LOTS 6, 8 & 10, BLOCK 1, "HILL TRACT", BK. 29, PG. 45, MCR, & LOT 19,  
 THE N. 1/2 OF LOT 20, & PORTIONS OF LOTS 21 & 22, BLOCK 8, "IRVING PLACE", BK. 28, PG. 24, MCR  
 SE 1/4, SECTION 10, TOWNSHIP 1 NORTH, RANGE 1 WEST, G&SRM  
 CITY OF AVONDALE

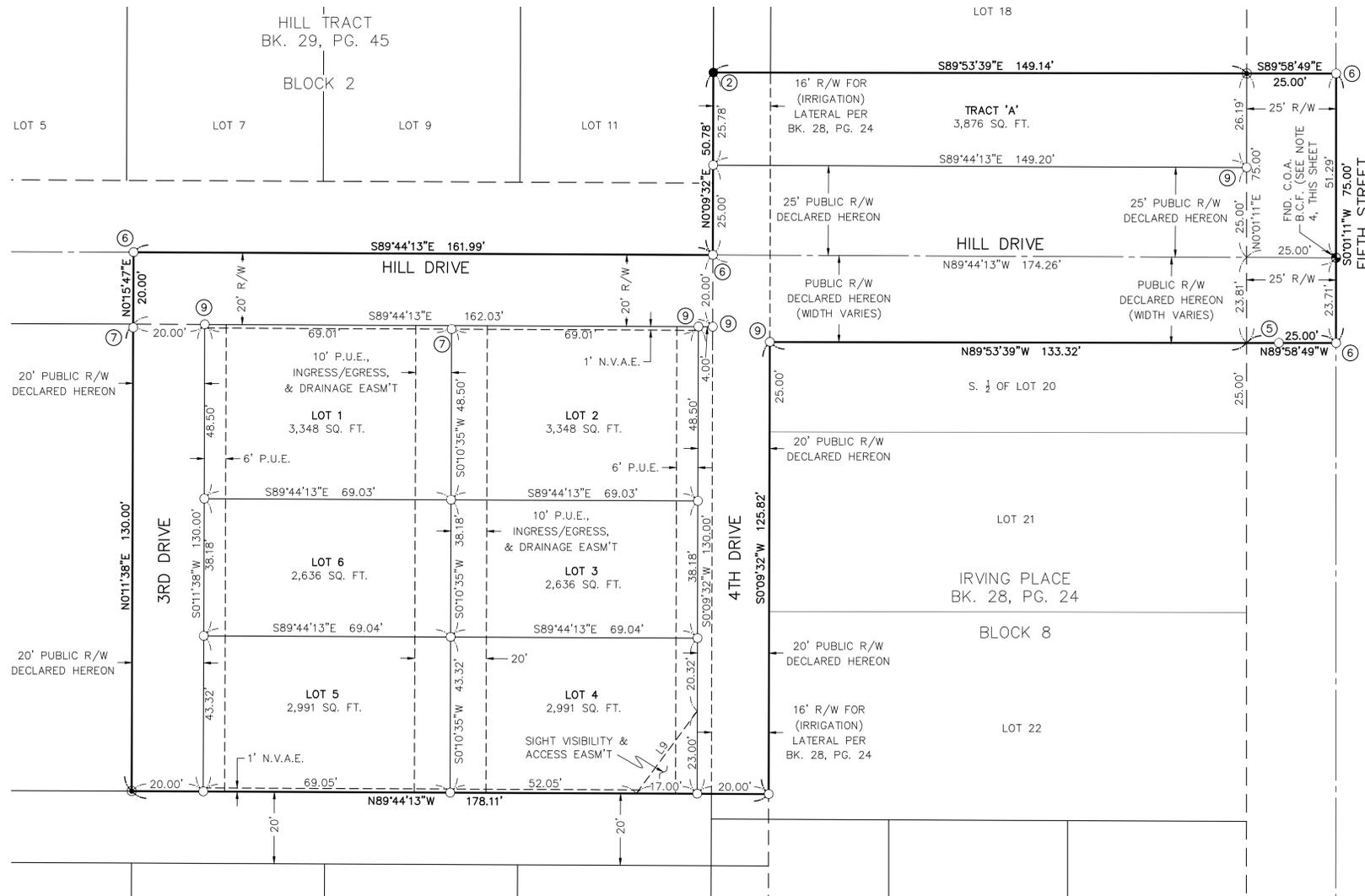
JOB NO.  
 3409.006  
 PROJECT MGR.  
 B. FLIPPO



SHEET  
 1 OF 2

# "HILL TRACT ESTATES"

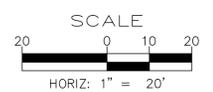
A REPLAT OF LOTS 6, 8 & 10, BLOCK 1, "HILL TRACT", BK. 29, PG. 45, MCR, &  
 LOT 19, THE N. 1/2 OF LOT 20, & PORTIONS OF LOTS 21 & 22, BLOCK 8,  
 "IRVING PLACE", BK. 28, PG. 24, MCR  
 LOCATED IN THE SOUTHEAST QUARTER OF SECTION 10, TOWNSHIP 1 NORTH,  
 RANGE 1 WEST OF THE GILA AND SALT RIVER MERIDIAN,  
 CITY OF AVONDALE, MARICOPA COUNTY, ARIZONA



DETAIL 'A'  
 SCALE: 1"=20'

### LEGEND

- SECTION LINE
- SUBDIVISION BOUNDARY
- LOT LINE
- x-x-x- FENCE
- - - - - EASEMENT
- - - - - RIGHT OF WAY LINE
- - - - - OLD LOT LINE
- - - - - CENTERLINE
- SET 1/2"x18" REBAR WITH YELLOW PLASTIC CAP MARKED "LS 48510" UNLESS OTHERWISE NOTED
- FOUND MONUMENT AS NOTED
- FOUND BRASS CAP AS NOTED
- FOUND REBAR W/CAP "LS 48510"
- A.D.O.T. ARIZONA DEPT. OF TRANSPORTATION
- B.C.H.H. BRASS CAP IN HAND HOLE
- B.C.F. BRASS CAP FLUSH
- (C) CALCULATED VALUE
- C.O.A. CITY OF AVONDALE
- CONC. CONCRETE
- DKT. DOCKET
- EASM'T. EASEMENT
- G&SRM GILA & SALT RIVER MERIDIAN
- (M) MEASURED VALUE PER THIS SURVEY
- M.C.H.D. MARICOPA COUNTY HIGHWAY DEPARTMENT
- MCR MARICOPA COUNTY RECORDS
- N.V.A.E. NON-VEHICULAR ACCESS EASEMENT
- (P) PLAT BEARING/DISTANCE
- PG. PAGE
- P.L. PROPERTY LINE
- P.U.E. PUBLIC UTILITY EASEMENT
- R/W RIGHT OF WAY



LINE #	LENGTH	BEARING
L1	20.00'	N0°15'47"E
L2	50.78'	N0°09'32"E
L3	25.00'	S89°58'49"E
L4	75.00'	S0°01'11"W
L5	25.00'	N89°58'49"W
L6	16.00'	S89°44'13"E
L7	51.29'	S0°01'11"W
L8	23.71'	S0°01'11"W
L9	28.58'	N36°39'54"E

### SURVEYOR NOTES:

- THE DESCRIPTION OF PROPERTY BOUNDARIES AND EASEMENTS SHOWN HEREON REPRESENT THAT INFORMATION PROVIDED IN STEWART TITLE AND TRUST OF PHOENIX TITLE REPORT ORDER NO'S. 08260222, 09260034, AND 09260060, EFFECTIVE FEB. 6, 2009, FEB. 26, 2009, AND APRIL 8, 2009, RESPECTIVELY, AND STEWART TITLE GUARANTY COMPANY COMMITMENT FOR TITLE INSURANCE ORDER NO. 08260131 AMENDMENT NO. 2, EFFECTIVE FEBRUARY 25, 2009. STRAND ASSOCIATES, INC. HAS RELIED SOLELY ON SAID TITLE REPORTS FOR THE DESCRIPTION OF PROPERTY BOUNDARIES, EXISTING EASEMENTS AND TITLE MATTERS SHOWN HEREON.
- GPS REAL-TIME KINEMATIC (RTK) EQUIPMENT, METHODS, AND PROCEDURES WERE UTILIZED IN THE PRODUCTION OF THIS SURVEY.
- BASIS OF BEARING: THE BEARING OF NORTH 00°01'11" EAST OF THE EAST LINE OF THE SOUTHEAST QUARTER OF SECTION 10, TOWNSHIP 1 NORTH, RANGE 1 WEST, G&SRM AS SHOWN ON THAT CERTAIN RECORD OF SURVEY RECORDED IN BOOK 694, PAGE 38, MCR.
- FOUND CITY OF AVONDALE BRASS CAP MONUMENT FALLS 0.25' SOUTH OF CALCULATED POSITION. SAID MONUMENT WAS ESTABLISHED IN CONJUNCTION WITH THE HILL DRIVE ROADWAY EXTENSION CONSTRUCTION PROJECT.

### MONUMENT DESCRIPTIONS:

- FND. 1" IRON PIPE, BENT WEST, SOUTH 0.01' & WEST 0.32' OF CALCULATED POSITION.
- FND. 1/2" REBAR, BENT NORTH.
- FND. IRON ROD, NORTH 0.31' & EAST 0.09' OF CALCULATED POSITION.
- FND. IRON PIPE, SOUTH 0.17' & EAST 0.24' OF CALCULATED POSITION.
- CORNER FALLS IN CONCRETE SIDEWALK HANDICAP RAMP. SET MAG NAIL WITH BRASS WASHER WITNESS CORNER 9.00 FEET EAST, MARKED "LS 48510, W.C. 9FT"
- SET MAG NAIL WITH BRASS WASHER MARKED "LS 48510"
- CORNER FALLS IN CONCRETE SIDEWALK. SET 1/2"x18" REBAR WITNESS CORNER 1.00 FOOT SOUTH ON PROPERTY LINE WITH YELLOW PLASTIC CAP MARKED "LS 48510" AND BRASS WASHER MARKED "1FT WC".
- FND. A.D.O.T. B.C.H.H., NORTH 0.50' & WEST 0.58' OF CALCULATED POSITION.
- CORNER FALLS IN CONCRETE SIDEWALK. SET NAIL IN CONCRETE WITH BRASS WASHER MARKED "LS 48510".

### SURVEY REFERENCES:

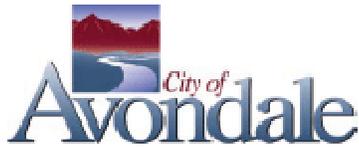
- R1 MARICOPA COUNTY GEODETIC DENSIFICATION AND CADASTRAL (GDAC) PLAT RECORDED IN BOOK 694, PAGE 38, MCR
- R2 GLO PLAT FOR TOWNSHIP 1 NORTH, RANGE 1 WEST OFFICIALLY FILED 12-2-1870
- R3 RESULTS OF SURVEY RECORDED IN BOOK 1027, PAGE 12, MCR
- R4 RESULTS OF SURVEY RECORDED IN BOOK 1120, PAGE 10, MCR
- P PLAT OF "HILL TRACT" RECORDED IN BOOK 29 OF MAPS, PAGE 45, MCR
- P1 PLAT OF "IRVING PLACE" RECORDED IN BOOK 28 OF MAPS, PAGE 24, MCR

NO.	DATE	BY	REVISIONS

"HILL TRACT ESTATES"  
 A REPLAT OF LOTS 6, 8 & 10, BLOCK 1, "HILL TRACT", BK. 29, PG. 45, MCR, & LOT 19,  
 THE N. 1/2 OF LOT 20, & PORTIONS OF LOTS 21 & 22, BLOCK 8, "IRVING PLACE", BK. 28, PG. 24, MCR  
 SE 1/4, SECTION 10, TOWNSHIP 1 NORTH, RANGE 1 WEST, G&SRM  
 CITY OF AVONDALE

JOB NO.  
 3409.006  
 PROJECT MGR.  
 B. FLIPPO





# CITY COUNCIL REPORT

**SUBJECT:**

Ordinance 1523-813 - Authorizing the Sale of Legacy Avondale Homes

**MEETING DATE:**

August 12, 2013

**TO:** Mayor and Council

**FROM:** Gina Montes, Neighborhood and Family Services Director (623) 333-2727

**THROUGH:** Charlie McClendon, City Manager

**PURPOSE:**

Staff is requesting that the City Council approve Ordinance 1523-813 which would authorize the City Manager to accept offers on the Legacy Avondale properties. The Legacy Avondale properties will consist of a total of six new homes on the 300 block of Hill Drive.

**BACKGROUND:**

In March 2011, the City received \$1,224,903 from the U.S. Department of Housing and Urban Development through the third round of Neighborhood Stabilization Program funding (NSP3). Neighborhood and Family Services (NFS) staff later sought council approval of the Hill Drive Redevelopment project in October 2012 as a response to the changes in the housing market and as a strategy to ensure the City met the federal expenditure requirements for the NSP3 funding. Council approved an amendment to the NSP3 Action Plan at that time which included the Hill Drive Redevelopment project. The six-home housing project was subsequently named Legacy Avondale. This project includes the construction of six new homes which are to be sold to NSP eligible buyers.

**DISCUSSION:**

At this time, four of those homes are nearly complete and will soon be made available for purchase. The construction of the last two units is contingent upon the sale of the units already completed. To ensure that the City completes the redevelopment project as planned and meets the goals of selling the properties to owner-occupants, NFS staff recommends that Council approve the ordinance authorizing the City Manager to accept offers on the Legacy Avondale properties until which time all units have been completed and sold to NSP eligible homebuyers.

**BUDGETARY IMPACT:**

There is no impact to the general fund. Approval of this ordinance would generate program income necessary to complete the redevelopment project and would make additional funding available for homebuyer assistance.

**RECOMMENDATION:**

NFS Staff recommend that the Council approve Ordinance 1523-813 authorizing the City Manager to accept offers for the sale of the Legacy Avondale properties.

**ATTACHMENTS:**

Click to download

[Ordinance 1523-813](#)

**ORDINANCE NO. 1523-813**

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, APPROVING THE SALE OF CERTAIN REAL PROPERTY, GENERALLY LOCATED ON HILL DRIVE BETWEEN THIRD STREET AND FIFTH STREET.

**WHEREAS**, the City of Avondale (the “City”) is the owner of adjoining lots 6, 8 and 10, Block 1, “Hill Tract” according to Book 29 Page 45, official records of Maricopa County, certain real property generally located on Hill Drive between Third Street and Fifth Street in Avondale. This property has been combined and re-subdivided into six lots, according to the final plat of “Hill Tract Estates,” approved by the Council of the City of Avondale (the “City Council”) on August 12, 2013 and as subsequently recorded in the Office of the Maricopa County Recorder. Lots 1 - 6 of this re-subdivision have been developed for affordable housing purposes, commonly known as “Legacy Avondale” (collectively, the “Properties”); and

**WHEREAS**, pursuant to Article I, Section 3 of the Avondale City Charter, the City may sell property as the City’s interests may require; and

**WHEREAS**, the City Council desires to sell whatever right, title, or interest it has in the Properties, contingent on the standards set for acceptable offers for the purchase of the Properties as set forth below.

**NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF AVONDALE** as follows:

SECTION 1. The recitals above are hereby incorporated as if fully set forth herein.

SECTION 2. The City Manager is hereby authorized to accept offers on the Properties that are within ten percent of the appraised value of the Properties, as determined by an initial appraisal of the Properties performed by the City.

SECTION 3. The Mayor, the City Manager, the City Attorney and the City Clerk are hereby authorized and directed to take all steps and execute all documents necessary to carry out the purpose and intent of this Ordinance.

SECTION 4. If any provision of this Ordinance is for any reason held by any court of competent jurisdiction to be unenforceable, such provision of portion hereof shall be deemed separate, distinct, and independent of all other provisions and such holding shall not affect the validity of the remaining portions of this Ordinance.

**PASSED AND ADOPTED** by the Council of the City of Avondale, August 12, 2013.

---

Marie Lopez Rogers, Mayor

ATTEST:

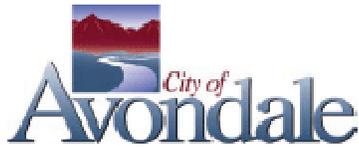
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Carmen Martinez, City Clerk

APPROVED AS TO FORM:

---

Andrew J. McGuire, City Attorney



# CITY COUNCIL REPORT

**SUBJECT:**

Ordinance 1522-813 - Dedication of Drainage Easement to Elliot Homes, Inc.

**MEETING DATE:**

August 12, 2013

**TO:** Mayor and Council

**FROM:** Charles Andrews, P.E., City Engineer, 623-333-4216

**THROUGH:** Charlie McClendon, City Manager

**PURPOSE:**

Staff is requesting that the City Council adopt an ordinance dedicating a drainage easement to Elliot Homes, Inc. (future conveyance to the Avalon Estates HOA) to accommodate the conveyance of off-site historical flows, and authorize the Mayor or City Manager, and City Clerk to execute the necessary documents.

**BACKGROUND:**

The final plat for Avalon Estates was approved March 20, 2006. Although the final plat identified dedicated tracts for on-site retention and flows, it failed to address historical patterns of flow which enter the site from upstream. There is a pipe which conveys irrigation tail water and storm water runoff from Glenn Arm Farms and 107<sup>th</sup> Avenue south across Earll Drive to the Avalon Estates property. Although this pipe crosses the public right-of-way, the pipe is not owned or maintained by the City.

**DISCUSSION:**

It is necessary to record an easement for this pipe and define ownership and maintenance responsibilities at this time. Doing such, shall release the City from any future liability that may occur upstream due to the backing up, clogging, poor performance, and/or lack of maintenance of the pipe.

**BUDGETARY IMPACT:**

The proposed dedication of the drainage easement will have no budgetary impact on the City.

**RECOMMENDATION:**

Staff recommends that the City Council adopt an ordinance dedicating a drainage easement to Elliot Homes, Inc. (future conveyance to the Avalon Estates HOA) to accommodate the conveyance of off-site historical flows, and authorize the Mayor or City Manager, and City Clerk to execute the necessary documents.

**ATTACHMENTS:**

Click to download

[Ordinance 1522-813](#)

**ORDINANCE NO. 1522-813**

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, GRANTING AN EASEMENT TO ELLIOTT HOMES FOR MAINTENANCE AND REPAIR OF DRAINAGE FACILITIES.

**WHEREAS**, the City of Avondale (the “City”) owns property that contains drainage facilities necessary for the conveyance of historic drainage flows from the area north of Earll Drive, under Earll Drive and into a retention basin south of Earll Drive; and

**WHEREAS**, Elliott Homes, Inc. (“Elliott Homes”) owns property that is adjacent to the City’s property and which contains thereon the outflow and retention area for the drainage facilities; and

**WHEREAS**, Elliott Homes is obligated to accept the historic drainage flows from the drainage facilities onto its property; and

**WHEREAS**, the City desires to grant to Elliott Homes an easement to access portions of the City’s property to fulfill its obligations to maintain and repair the drainage facilities.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF AVONDALE** as follows:

**SECTION 1.** The recitals above are hereby incorporated as if fully set forth herein.

**SECTION 2.** An easement, in a form approved by the City Attorney, is hereby granted to Elliott Homes over the area described and depicted in Exhibit A, attached hereto and incorporated herein by reference.

**SECTION 3.** The Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to take all steps and execute all documents necessary to carry out the purpose and intent of this Ordinance.

[SIGNATURES ON FOLLOWING PAGE)

**PASSED AND ADOPTED** by the Council of the City of Avondale, August 12, 2013.

---

Marie Lopez Rogers, Mayor

ATTEST:

---

Carmen Martinez, City Clerk

APPROVED AS TO FORM:

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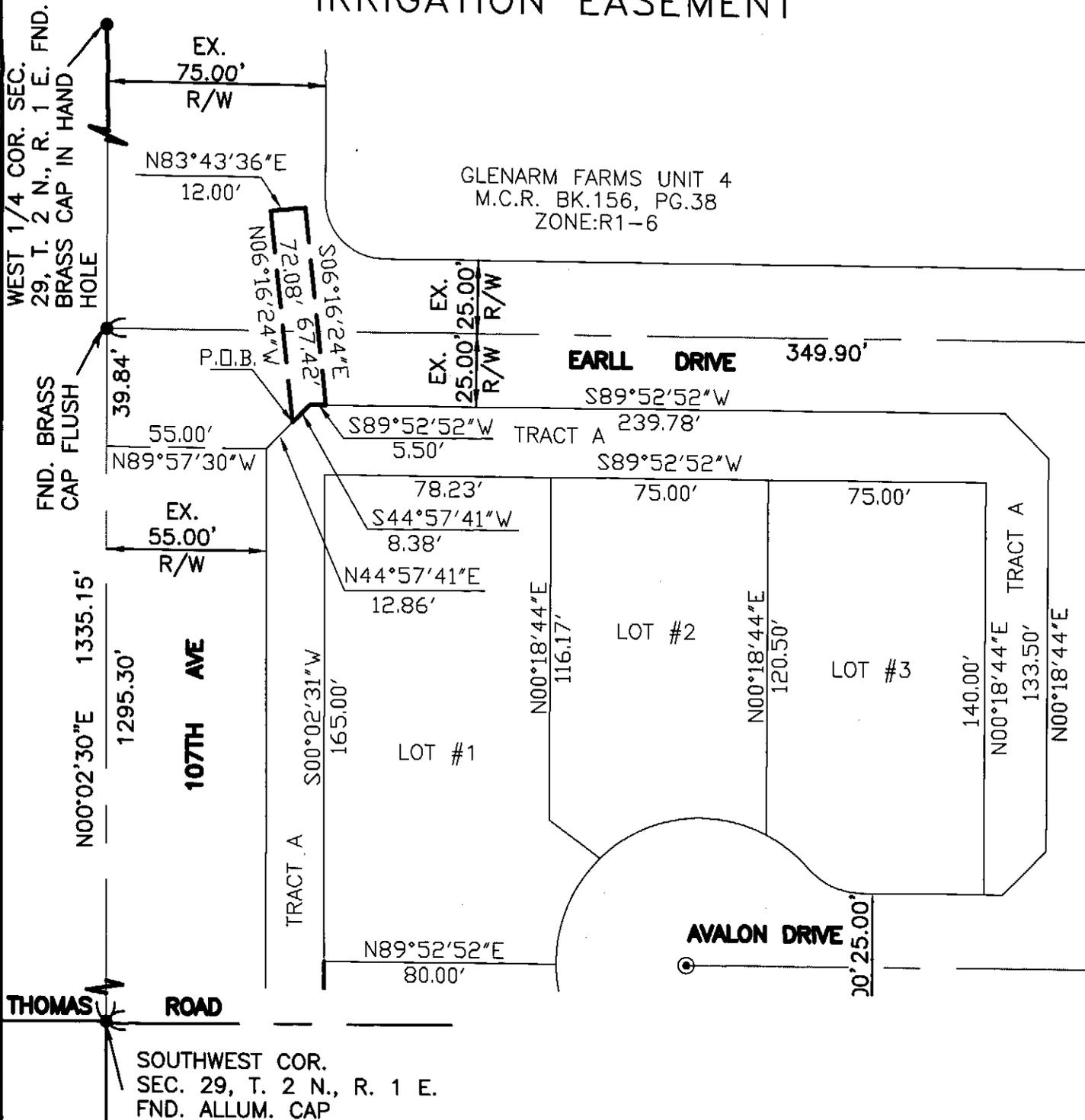
Andrew J. McGuire, City Attorney

EXHIBIT A  
TO  
ORDINANCE NO. 1522-813

[Legal Description and Map]

See following pages.

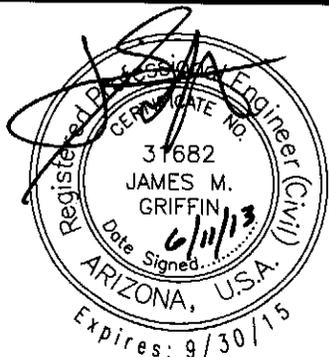
# IRRIGATION EASEMENT



JOB NAME: AVALON ESTATES  
 PLAN TYPE: Irrigation Easement,  
 107th Ave & Earll Drive



**GRIFFIN-JACOBS  
 ENGINEERING, INC.**  
 CIVIL ENGINEERING  
 LAND PLANNING  
 811 E. ORANGEWOOD AVE.  
 PHOENIX, ARIZONA 85014  
 T. 602.212.1279 F. 602.212.1553



JOB NO: 0408B  
 SCALE: 1"=50'  
 DATE: 5-13-13  
 PAGE: 1 OF 2

LEGAL DESCRIPTION

A PORTION OF THE SOUTHWEST QUARTER OF SECTION 29, TOWNSHIP 2 NORTH, RANGE 1 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOW.

COMMENCING AT THE SOUTHWEST CORNER OF SECTION 29, TOWNSHIP 2 NORTH, RANGE 1 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA;

THENCE N00°02'30"E ALONG THE WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 29, A DISTANCE OF 1295.30 FEET;

THENCE S89°57'30"E A DISTANCE OF 55.00 FEET TO THE EAST RIGHT OF WAY LINE OF 107TH AVENUE;

THENCE N44°57'41"E ALONG A NORTHEASTERLY ANGLED RIGHT OF WAY LINE A DISTANCE OF 12.86 FEET TO THE POINT OF BEGINNING;

THENCE N06°16'24"W A DISTANCE OF 72.08 FEET;

THENCE N83°43'36"E A DISTANCE OF 12.00 FEET;

THENCE S06°16'24"E A DISTANCE OF 67.42 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF EARLL DRIVE;

THENCE S89°52'52"W ALONG SAID SOUTH RIGHT OF WAY LINE A DISTANCE OF 5.50 FEET;

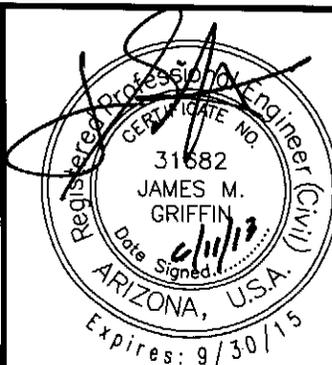
THENCE S44°57'41"W ALONG A SOUTHWESTERLY ANGLED RIGHT OF WAY LINE A DISTANCE OF 8.38 FEET TO THE POINT OF BEGINNING;

JOB NAME: AVALON ESTATES  
PLAN TYPE: Irrigation Easement,  
107th Ave & Earll Drive

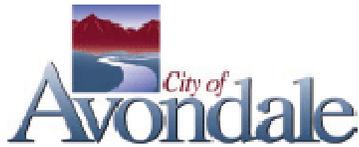


**GRIFFIN-JACOBS  
ENGINEERING, INC.**

CIVIL ENGINEERING  
LAND PLANNING  
811 E. ORANGEWOOD AVE.  
PHOENIX, ARIZONA 85014  
T. 602.212.1279 F. 602.212.1553



JOB NO: 0408B  
SCALE: NTS  
DATE: 5-13-13  
PAGE: 2 OF 2



# DEVELOPMENT SERVICES

**SUBJECT:**

Public Hearing - Freeway Corridor Specific Plan Update (PL-11-0080)

**MEETING DATE:**

August 12, 2013

**TO:** Mayor and Council

**FROM:** Tracy Stevens, Acting Development and Engineering Services Director (623) 333-4012

**THROUGH:** Charlie McClendon, City Manager (623) 333-1015

---

**REQUEST:** City Council will hold a public hearing related to the City-initiated amendment to the Freeway Corridor Specific Plan (FCSP) and continue the item to the September 16, 2013 City Council Meeting. The continuance is necessary to allow the Planning Commission at their request to continue the review of the application at the August 15, 2013 Planning Commission Meeting.

**BACKGROUND:**

The Freeway Corridor Specific Plan (FCSP) was originally adopted by the Avondale City Council in June 1991, in accordance with State of Arizona enabling statutes that allow municipalities to provide greater detail for development guidance in sensitive areas. Since 1991, the FCSP has guided the new development of regional shopping centers, office parks, commerce parks, and the Auto Mall.

The Freeway Corridor Specific Plan is largely a design-oriented document intended to ensure that the physical form development takes is in line with the vision our community has for an area and an implementation tool of the General Plan. Many other development concepts, such as connectivity, landscape themes, and architecture, can be regulated by a Specific Plan in much the same way.

The FCSP update was presented to the Planning Commission in May, at which time staff recommended a continuance to allow for additional community outreach and interal review.

Staff received feedback from the property owner at the southeast corner of Avondale Blvd and McDowell Road and one land use attorney representing several Freeway Corridor property owners. Both raised concerns that the "Floor Area Ratios" in the Plan would delay development of their property and others in the Freeway Corridor and also requested several of the requirements be changed to recommendations. As a result, staff revised the plan to recommend FAR's for properties adjacent to the City's planned high capacity transit corridor only.

As a result of the proposed changes, the Planning Commission voiced concern that the changes will make compliance with the plan too optional and were concerned that if the plan is too flexible, development would likely not reach the desired intensity levels, which will negatively impact the City's ability to attract and build the high-capacity transit in the future.

The Planning Commission continued the item to the August 15, 2013 meeting, directing staff to revise the plan to meet the City's vision as adopted in the General Plan 2030 of an intense, vibrant, economic hub along the Freeway Corridor. Staff is currently revising the document as directed and will present it for Commission approval on August 15th. The document will once again contain requirements, although in certain cases those requirements may be slightly lowered from the original draft. The document will also contain additional information pertaining to project phasing that will

assist the development community achieve the City's goals over a period of time.

Because of the Planning Commission's continuance of the item last month, the City Council schedule for adoption has been affected. Ultimate Council action on the item will need to be delayed until after the Planning Commission has re-heard the item on August 15. Because the application was advertised for a City Council hearing on August 12th, a public hearing is required this evening. Staff will not, however, be presenting a plan for approval. Instead, that will occur at the September 16, 2013 Council meeting.

**PARTICIPATION:**

During the continuance time period staff will continue to meet with the property owners within the freeway corridors and review the proposed changes as a result of the recent meeting.

**RECOMMENDATION:**

The City Council must conduct a public hearing and **CONTINUE** Application PL-11-0080, a request to adopt the amended Freeway Corridor Specific Plan, to the September 16, 2013 City Council Regular Meeting.

**PROPOSED MOTION:**

I move that the City Council **CONTINUE** application PL-11-0080, a request to approve a Resolution adopting the amended Freeway Corridor Specific Plan (FCSP), to the September 16, 2013 City Council Regular Meeting.

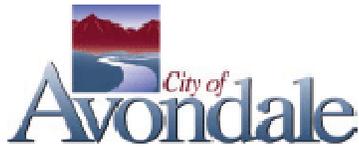
**ATTACHMENTS:**

[Click to download](#)

No Attachments Available

**PROJECT MANAGER:**

Ken Galica, Planner II (623) 333-4019



# CITY COUNCIL REPORT

**SUBJECT:**

Public Hearing - Resolution 3129-813 - CenturyLink  
Cable License Application and Waiver Requests

**MEETING DATE:**

August 12, 2013

**TO:** Mayor and Council

**FROM:** Daniel Davis, Economic Development Director 623-333-1411

**THROUGH:** Charlie McClendon, City Manager

**PURPOSE:**

Staff is requesting City Council approval of Resolution 3129-813 regarding CenturyLink's cable license application, including their waiver requests.

**BACKGROUND:**

On May 2, 2013, Qwest Broadband Services, Inc. ("QBSI") d/b/a CenturyLink, submitted an application for a cable license with the City of Avondale. CenturyLink paid the required non-refundable \$10,000 fee to be considered for a cable license in the City's jurisdiction. The cable license agreement would permit CenturyLink to begin to provide its "Prism" branded services in the community. CenturyLink's application requested five (5) specified waivers to the cable license application requirements in the City Code (City Code Chapter 4.5).

Pursuant to the City Code, the City Council must decide whether to grant or deny the waiver requests within 120 days following CenturyLink's submittal on May 2, 2013. Therefore, the City Council has until August 30, 2013 to grant or deny CenturyLink's waiver requests.

CenturyLink requested the following waivers to the City's cable license application requirements set forth in the City Code:

1. The City Code requires the applicant to submit a detailed and complete financial statement, certified by an independent certified public accountant, for the fiscal year next preceding the date of the application, and a letter or other acceptable evidence in writing from a recognized lending institution or funding source, addressed to both the applicant and the City Council, setting forth the basis for a study performed by such lending institution or funding source, and a clear statement of its intent as a lending institution or funding source to provide whatever capital shall be required by the applicant to construct and operate the proposed cable system in the City, or a statement from an independent certified public accountant, certifying that the applicant has available sufficient free, net and uncommitted cash resources to construct and operate the proposed cable system in the City.

CenturyLink provided a link to its 2012 10k filing with the Securities and Exchange Commission. However, because it is a publicly traded company, CenturyLink requested a waiver from the type of statement requested in this section because it is a private business.

2. The City Code requires the applicant to submit a detailed financial plan (pro forma) describing for each year of the initial license, projected number of subscribers, rates, all revenues, operating expenses, capital expenditures, depreciation schedules, income statements, and a sources and uses of funds statement.

CenturyLink requested a waiver on this requirement because it is a publicly traded company and releases a very limited amount of forward-looking information for the company as a whole, and it does not provide forward-looking information at the individual market level because it could lead to incorrect or inappropriate assumptions or conclusions by its current and potential investors regarding the business as a whole. Given the extremely sensitive nature of the information contained in the requested pro forma, CenturyLink feels it cannot file this information as part of its application.

3. The City Code requires the applicant to submit the total cost of completion of such licensed cable system(s); and the amount of applicant's and its parent's or subsidiary's resources committed to this project.

CenturyLink requested a waiver on this requirement because it determined that it is unable to quantify the total resources committed to completion of the above identified cable systems.

4. The City Code requires the applicant to submit a detailed map indicating all areas proposed to be served and a proposed time schedule for the installation of all equipment necessary to become operational throughout the entire area to be served.

CenturyLink requested a waiver on this requirement because, with respect to the provision of a detailed map, as a second entrant (to Cox Communications), it cannot agree to any mandatory build schedule associated with the provision of cable services in the City. Rather, CenturyLink believes its deployment of cable services needs to be tied to success in the market.

CenturyLink has agreed to provide the City a confidential/proprietary map for review that outlines locations that have the proper infrastructure to receive service at time of launch, as well as agreeing to meet periodically with the City to inform it of the company's actual and planned deployment of cable services. The City is in the process of negotiating the terms of the cable license agreement including adding automatic renewal provisions if CenturyLink offers cable services to the Living Units in Historic Avondale and offers cable service to more than 50% of the Living Units in the City.

5. The City Code requires the applicant to submit a detailed statement setting forth in its entirety any and all agreements and undertakings, whether formal or informal, written, oral, or implied, existing or proposed to exist between the applicant and any person, firm, or corporation that materially relate or pertain to or depend upon the application and the granting of the initial license.

Qwest Broadband Services, Inc. d/b/a CenturyLink's parent company, CenturyLink, Inc. purchased Qwest Communications International, Inc ("Qwest"). Qwest carries extensive legacy rights from historical AT&T, USWest, and Qwest holdings from their acquisition of Qwest. CenturyLink has an agreement with Qwest to offer video services on Qwest's infrastructure without building new infrastructure. Given this arrangement, CenturyLink seeks not to be bound by traditional cable license limitations.

Qwest, the traditional telephone provider in the City, has and will continue to pull all necessary permits from the City to deploy its facilities. Qwest has provided the City with information in the past regarding location of facilities, and will continue to work with the City and comply with all applicable codes, rules and ordinances with respect to right-of-way management. CenturyLink does not have any agreements with Qwest, the phone company, or any electric company. Qwest owns the facilities in the public right-of-way and pulls all permits with the City. Under federal law, CenturyLink is allowed to operate on a fully integrated basis with Qwest and there are no formal agreements related thereto. Under federal law, CenturyLink is permitted to operate with Qwest on a fully integrated basis.

CenturyLink determined that it cannot provide agreements that materially relate to its provision of cable service such as agreements to acquire video content. The requested data is highly confidential and competitively sensitive. Further such agreements often include nondisclosure agreements. Accordingly, CenturyLink requested a waiver on this requirement.

## **DISCUSSION:**

The cable license agreement would grant CenturyLink the ability to operate and develop competing cable television services in the City using Qwest's existing infrastructure. These video services would likely be bundled with Internet and related communications and entertainment services.

The effect of approving CenturyLink's license application, including its waiver requests, and cable license agreement, could produce additional competitive services, yield additional revenues, and would allow City Council to hear public comments on those potential developments. The City has been working with CenturyLink to negotiate service coverage that specifically meets the needs of the Avondale community. Those negotiation items include:

- Coverage for new construction in the City
  - The City would agree to accept that a full build-out is prohibitive to any new entrant to the cable television market. However, the City maintains its interest in ensuring services are provided to new construction so as to assure modern services to growth areas and inhibit the need for trenching and street cuts after developments are built. Therefore, CenturyLink would agree to offer cable services to new Living Units in the City so long as 1) CenturyLink was not prohibited from doing so by an agreement or 2) offering the cable services is economically and technically feasible
- Current negotiations reflect that the agreement will have an initial term of six (6) years, beginning November 1, 2013 (the "Effective Date") and ending October 31, 2019.
  - The parties can renew the agreement by following the renewal requirements set forth in Cable Code Section 4.5-2(k) or the following:
  - Alternatively, the agreement can be automatically renewed if CenturyLink satisfies one of the conditions below:
    - An additional two (2) years (to October 31, 2021) if, on or before October 31, 2016, CenturyLink offers Cable Services to at least 20% of the Living Units in the City for the previous 12 months; and an additional two (2) years (to October 31, 2023), if, at the end of the sixth year after the effective date, CenturyLink offers Cable Services to 50% of the number of living units in the City; or
    - An additional two (2) years (to October 31, 2021) if CenturyLink offers Cable Services to new living units counted towards the 50% requirement and would exclude those living units that CenturyLink is prohibited from offering Cable Service pursuant to an existing agreement; or
  - Due to the current infrastructure, CenturyLink is not currently capable of offering cable services to Historic Avondale. To address this area, CenturyLink will conduct a feasibility study to determine what new facilities would have to be deployed in order to provide cable services to Historic Avondale.
  - Additionally, the City Council may extend the license agreement for an additional three (3) years (to October 31, 2022), if CenturyLink provides reasonable supporting documentation that it is capable of offering Cable Services to a "substantial portion" of the living units in Historic Avondale on or before October 31, 2019.
  - If CenturyLink meets all of the renewal requirements, they would extend the agreement for a total of nine (9) additional years (to October 31, 2028).

## **BUDGETARY IMPACT:**

If approved, the City would receive 5% of CenturyLink gross revenues received for new television services rendered in Avondale. This amount is inclusive of all fees and associated payments to the City.

## **RECOMMENDATION:**

Staff is requesting City Council approval of Resolution 3129-813 regarding CenturyLink's cable license application, including their waiver requests and schedule a second public hearing on September 9, 2013.

## ATTACHMENTS:

Click to download

[Resolution No. 3129-813](#)

**RESOLUTION NO. 3129-813**

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, APPROVING QWEST BROADBAND SERVICES, INC. D/B/A CENTURYLINK'S CABLE LICENSE APPLICATION WAIVER REQUESTS.

**WHEREAS**, on May 2, 2013, Qwest Broadband Services, Inc. d/b/a CenturyLink ("CenturyLink") submitted an application (the "Application") for a cable license with the City of Avondale, Arizona (the "City") and paid the nonrefundable \$10,000 submittal fee; and

**WHEREAS**, as part of its Application, CenturyLink requested certain waivers described in Exhibit A attached hereto and incorporated herein by reference to the cable license application requirements set forth in the City Code, Chapter 4.5, Cable Television Systems, Article I, Cable Code);

**BE IT RESOLVED** BY THE COUNCIL OF THE CITY OF AVONDALE as follows:

SECTION 1. The Mayor and Council of the City hereby grant CenturyLink's waiver requests set forth in Exhibit A.

SECTION 2. The Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to take all steps necessary to carry out the purpose and intent of this Resolution.

**PASSED AND ADOPTED** by the Council of the City of Avondale, August 12, 2013.

\_\_\_\_\_  
Marie Lopez Rogers, Mayor

ATTEST:

\_\_\_\_\_  
Carmen Martinez, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Andrew J. McGuire, City Attorney

EXHIBIT A  
TO  
RESOLUTION NO. 3129-813

[CenturyLink's Cable License  
Application and Waiver Requests]

See following pages.



Mary Ferguson LaFave  
Director of Video Affairs  
(612) 663-6913

April 30, 2013

Rogene Hill  
Assistant City Manager  
City of Avondale  
11465 West Civic Center Dr.  
Avondale, AZ 85323

RA0N05-02-13PM0520

CM

RE: Application of Qwest Broadband Services, Inc. d/b/a CenturyLink for a Cable License in the City of Avondale

Dear Ms. Hill:

By letter dated November 10, 2011, Qwest Broadband Services, Inc. d/b/a CenturyLink (CenturyLink) filed its initial application to offer video service in the City of Avondale. At that time, we also tendered a \$10,000.00 check to cover the application filing fee. Since that date, we have been in discussions with the City's legal counsel, Sarah Smith.

Based on our most recent communication with Ms. Smith, she advised that we should re-file our application which reflects certain changes Ms. Smith asked us to include. Accordingly, I am enclosing CenturyLink's application for a Cable License to offer its PRISM™ IPT V service in the City of Avondale. Also enclosed are several attachments to the application, including, e.g., a copy of the current PRISM TV channel lineup and proposed rates.

CenturyLink is very interested in working with the City to negotiate a competitive video franchise that will bring facilities based competition and its benefits to the citizens of Avondale. Please advise me of the next steps. I look forward to working with you and the City of Avondale.

Very truly yours,

A handwritten signature in black ink, appearing to read "Mary Ferguson LaFave".

Mary Ferguson LaFave

Cc: Sarah Smith, Esq.  
Midhael DiMaria  
Jeff Mirasola

April 12, 2013

(1) Each application for an initial license to construct, operate or maintain any cable system in the city shall be filed with the office of the city clerk in the form of a proposal for initial license as prescribed by the city. Said forms shall require, but shall not be limited to, the following information:

a. The name, address, and telephone number of the applicant:

Qwest Broadband Services, Inc. (QBSI) d/b/a CenturyLink  
1801 California Street, 10<sup>TH</sup> Floor  
Denver, CO 80202  
Attn: Public Policy  
303-992-5812

Company Website  
[www.centurylink.com](http://www.centurylink.com)

b. A detailed statement of the corporation or business entity organization of the applicant, including but not limited to, the following and to whatever extent required by the city;

(i) The names, residence and business addresses of all officers, directors, and associates of the applicant:

QBSI's ultimate parent corporation is CenturyLink, Inc. and through its subsidiaries owns 100% of QBSI.

CenturyLink Corporate Headquarters  
CenturyLink, Inc.  
100 CenturyLink Drive  
Monroe, LA 71203  
(318) 388-9000

## **QWEST BROADBAND SERVICES, INC.**

### **OFFICERS**

*Chief Executive Officer & President, Glen F. Post, III (Monroe, LA)*  
*Executive Vice President and Chief Operating Officer, Karen A. Puckett (Monroe, LA)*  
*Executive Vice President and Chief Financial Officer, R. Stewart Ewing, Jr. (Monroe, LA)*  
*Executive Vice President and General Counsel, Stacey W. Goff (Monroe, LA)*  
*Executive Vice President – IT Services, Girish Varma (Denver, CO)*  
*Senior Vice President – Public Policy and Government Relations, R. Steven Davis (Denver, CO)*  
*Chief Executive Officer,*  
*Savvis Operations, and President – Enterprise Markets Group James E. Ousley (Town and Country, MO)*  
*President – Wholesale Operations, William E. Cheek (Monroe, LA)*  
*Senior Vice President- Controller and Operations Support, David D. Cole (Monroe, LA)*  
*Senior Vice President – Network Services, Maxine Moreau (Monroe, LA)*  
*Senior Vice President – Corporate Strategy, Product Development and Chief Technology Officer, Olani Matthew Beal (Monroe, LA)*  
*Senior Vice President and Treasurer, G. Clay Bailey (Monroe, LA)*  
*Vice President, Jonathan Robison (Monroe, LA)*  
*Secretary, Kay C. Buchart (Monroe, LA)*  
*Assistant Secretary, Carrick Inabnett (Monroe, LA)*

### **DIRECTORS**

Stacey W. Goff and R. Stewart Ewing, Jr.

(ii) The names, residence and business addresses of all officers, persons, and entities having a one (1) percent or larger share of the ownership of the applicant and the respective ownership share of each such person or entity; and

Capital Research Global Investors 12.02% at 3/31/2010  
333 South Hope Street 55/F  
Los Angeles, CA 90071

(iii) The names and addresses of any parent or subsidiary of the applicant, namely, any other business entity owning or controlling applicant in whole or in part or owned in whole or in part by the applicant, and a statement describing the nature of any such parent or subsidiary business entity, including but not limited to cable systems owned or controlled by the applicant, its parent and subsidiary and the areas served thereby.

Responding to (ii) and (iii), as set forth in the response to (1)(b)(i), QBSI's ultimate parent corporation is CenturyLink, Inc., and CenturyLink, Inc. through its subsidiaries owns 100% of QBSI. On April 21, 2010, CenturyLink, Inc. reached an agreement to purchase Qwest Communications International, Inc. ("QCII") through a tax-free, stock-for-stock transaction (the "Transaction"). Under the terms of the parties' merger agreement, CenturyLink, Inc. is the ultimate parent of QCII and the subsidiaries that were under QCII, including QBSI. The Transaction closed on April 1, 2011.

CenturyLink, Inc. is a publicly traded Louisiana corporation with headquarters in Monroe, Louisiana. CenturyLink through its operating subsidiaries offers a complete suite of communications services, including high-quality voice and broadband services over its advanced communication networks to consumers and businesses in 37 states, including the capability to provide cable services over its own facilities. CenturyLink currently has cable operations in multiple states as described below in Section (1)(e).

c. A detailed and complete financial statement of the applicant, certified by an independent certified public accountant, for the fiscal year next preceding the date of the application hereunder, and a letter or other acceptable evidence in writing from a recognized lending institution or funding source, addressed to both the applicant and the city council, setting forth the basis for a study performed by such lending institution or funding source, and a clear statement of its intent as a lending institution or funding source to provide whatever capital shall be required by the applicant to construct and operate the proposed cable system in the city, or a statement from an independent certified public accountant, certifying that the applicant has available sufficient free, net and uncommitted cash resources to construct and operate the proposed cable system in this city;

The following is a link to CenturyLink, Inc.'s 2012 10k filing with the Securities and Exchange Commission. <http://services.corporate-ir.net/SEC.Enhanced/SecCapsule.aspx?c=112635&fid=8666417> Because it is a public traded Company, CenturyLink cannot provide the type of statement requested in this section and respectfully requests the City Council grant a waiver of this requirement pursuant to its authority under Section 4.5-7(l) of the Avondale Code of Ordinances.

d. A detailed financial plan (pro forma) describing for each year of the initial license, projected number of subscribers, rates, all revenues, operating expenses, capital expenditures, depreciation schedules, income statements, and a sources and uses of funds statement. All information is to be presented in the format approved by the city;

As a publicly traded Company, CenturyLink releases a very limited amount of forward-looking information for the company as a whole, and it does not provide forward-looking information at the

its current and potential investors regarding the business as a whole. Given the extremely sensitive nature of the information contained in the requested pro forma, applicant cannot file this information as part of its application. Accordingly, CenturyLink respectfully requests the City Council grant a waiver of this requirement pursuant to its authority under Section 4.5-7(l) of the Avondale Code of Ordinances.

QBSI will provide the city of Avondale a map for review that outlines locations that have the proper infrastructure to receive service at time of launch. The map is highly confidential information and would not be subject to public disclosure.

e. A statement identifying, by place and date, any other cable system license(s) awarded to the applicant, its parent or subsidiary; the status of said license(s) with respect to completion thereof; the total cost of completion of such licensed cable system(s); and the amount of applicant's and its parent's or subsidiary's resources committed thereto; and

Through its subsidiaries, CenturyLink currently has 38 cable franchises. CenturyLink has launched PRISM™ service in Columbia, MO; Jefferson City, MO; Las Vegas, NV, LaCrosse, WI; Orlando, FL; Ft. Myers, FL; Tallahassee, FL; Raleigh, NC; pursuant to statewide franchise laws. QBSI has franchises in Phoenix, Colorado Springs, Omaha, Nebraska metropolitan areas as well as in Bellevue, Washington, Douglas County and Lone Tree, Colorado and Portland, Oregon

The attached Exhibit A shows locations where the company has a cable license to provide cable service .

CenturyLink is unable to quantify the total resources committed to completion of the above identified cable systems and accordingly respectfully requests the City Council grant a waiver of this requirement (set forth in 4.5.2(e) pursuant to its authority under Section 4.5.7(1) of the Avondale Code of Ordinances.

f. A detailed description of the proposed plan of operation of the applicant which shall include, but not be limited to, the following:

(i) A detailed map indicating all areas proposed to be served and a proposed time schedule for the installation of all equipment necessary to become operational throughout the entire area to be served;

With respect to the provision of a detailed map, as a second entrant, CenturyLink cannot agree to any mandatory build schedule associated with the provision of cable services in Avondale. Rather, its deployment of cable services needs to be tied to success in the market. QBSI will provide the city of Avondale a map for review that outlines locations that have the proper infrastructure to receive service at time of launch. The map is highly confidential information and would not be subject to public disclosure. In addition, CenturyLink will meet periodically with the City to inform it of our actual and planned deployment of cable services. . Accordingly, CenturyLink respectfully requests the City Council grant a waiver of this requirement (set forth in 4.5.2(g)(1)(f)(i), (ii), (iii), (v) and (vi) pursuant to its authority under Section 4.5-7(l) of the Avondale Code of Ordinances.

(ii) A statement or schedule setting forth all proposed classifications of rates and charges to be made against Subscribers and all rates and charges as to each of said classifications, including installation charges and cable service charges;

The following URL, [http://www.centurylink.com/prismtv/#Plans And Prices](http://www.centurylink.com/prismtv/#Plans%20And%20Prices), sets forth the current rates that are charged to PRISM™ customers in the Phoenix metropolitan area. These rates would be offered to the residents of the City if the cable franchise is approved prior to any rate adjustments by CenturyLink.

(iii) A detailed, informative and referenced statement describing the actual equipment and operational standards proposed by the applicant;

CenturyLink's Video network is fully integrated with its telephone network. The technology it is currently deploying and would intend to deploy is an Ethernet-based, switched digital video service (and is not a QAM-based, broadcast system). From the serving central office, CenturyLink deploys fiber feeder to a serving area interface (SAI), a terminal in a neighborhood which traditionally serves between 250 and 400 homes. The SAI houses the electronics which create a high-speed broadband circuit of at least 25Mbps over the copper sub-loop running from the SAI to individual residences. The video is provisioned over this high-speed broadband circuit and ultimately terminates in a set-top box attached to a television set.

CenturyLink has super head ends in Columbia, MO and Littleton, CO, each of which has a satellite "farm" used to download national content. This content is encoded at the head-end and is deployed over a fiber backbone to local head-ends where the local content, including any PEG channels, can be inserted for ultimate delivery to end users. In addition, the super head end also houses all the equipment necessary for video on demand. Having two super head ends provides redundancy to avoid any interruption of the provision of video content. Subscribers in Avondale will be served out of the super head end in Littleton, CO.

(iv) A copy of the form of any agreement, undertaking, or other instrument proposed to be entered into between the applicant and any subscriber;

See attached customer contract.

(v) A detailed statement setting forth in its entirety any and all agreements and undertakings, whether formal or informal, written, oral, or implied, existing or proposed to exist between the applicant and any person, firm, or corporation that materially relate or pertain to or depend upon the application and the granting of the initial license;

Qwest Corporation ("QC"), the traditional telephone provider in Avondale, has and will continue to pull all necessary permits from the City to deploy its facilities. QC has provided the City with information in the past regarding location of facilities, and will continue to work with the City and comply with all applicable codes, rules and ordinances with respect to right of way management. The applicant does not have any agreements with QC, the phone company, or any electric company. QC owns the facilities in the public ROW and pulls all permits with the City of Avondale. Under federal law, the applicant is allowed to operate on a fully integrated basis with QC and there are no formal agreements related thereto. Under federal law, the applicant is permitted to operate with QC on a fully integrated basis.

Per our initial meeting on April 4, 2012, the above response was deemed satisfactory.

CenturyLink cannot provide agreements that materially relate to its provision of cable service such as agreements to acquire video content. The requested data is highly confidential and competitively sensitive. Further such agreements often include non-disclosure agreements. Accordingly, CenturyLink respectfully requests the City Council grant a waiver of this requirement pursuant to its authority under Section 4.5-7(I) of the Avondale Code of Ordinances.

(vi) A copy of any agreement covering the license area, if existing between the applicant and the local telephone and/or electric utilities providing for the use of any facilities of the utility including but not limited to poles, lines or conduits; and

QC, the traditional telephone provider in Avondale, has and will continue to pull all necessary permits from the City to deploy its facilities. QC has provided the City with information in the past regarding location of facilities, and will continue to work with the City and comply with all applicable codes, rules and ordinances with respect to right of way management. Under federal law, the applicant is permitted to operate with QC on a fully integrated basis. See also, response to subparagraph (v) above.

Per our initial meeting on April 4, 2012, the above response was deemed satisfactory.

(vii) Any other details, statements, information or references pertinent to the subject matter of such application that are required or requested by the city council or by any other provision of law.

CenturyLink is the 3<sup>rd</sup> largest telecommunications carrier in the nation with \$18.38B in revenue. CenturyLink, Inc., through its subsidiaries and predecessor companies, has been providing telecommunications services to Arizona for over 100 years.

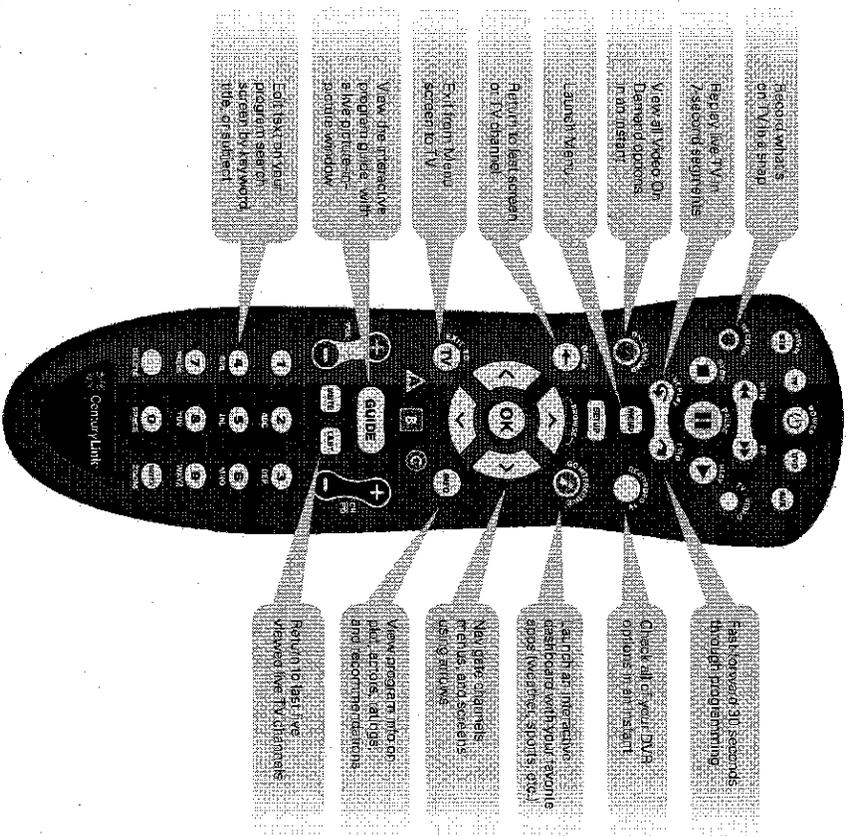
## **Exhibit A**

### **Local Franchise**

**Village of Pardeeville, Wisconsin**  
**Town of Fountain Prairie, Wisconsin**  
**Town of Gypsum, Colorado**  
**County of Eagle, Colorado**  
**Town of Eagle, Colorado**  
**Village of Casco, Wisconsin**  
**City of Platteville, Wisconsin**  
**Village of Luxemburg, Wisconsin**  
**Town of Fox Lake, Wisconsin**  
**Village of Cambria, Wisconsin**  
**Town of Marcellon, Wisconsin**  
**Village of Fall River, Wisconsin**  
**Town of Wyocena, Wisconsin**  
**Village of Randolph, Wisconsin**  
**City of Thorp, Wisconsin**  
**Town of Luxemburg, Wisconsin**  
**Town of Casco, Wisconsin**  
**Town of Lowville, Wisconsin**  
**Town of Westford, Wisconsin**  
**Town of Courtland, Wisconsin**  
**Town of Randolph, Wisconsin**  
**Village of Forestville, Wisconsin**

Village of Wycena, Wisconsin  
Town of Scott, Wisconsin  
Town of Red River, Wisconsin  
Town of Springvale, Wisconsin  
Town of Green Bay, Wisconsin  
Village of Rio, Wisconsin  
Town of Fort Winnebago, Wisconsin  
Town of Pacific, Wisconsin  
Village of Friesland, Wisconsin  
Town of Belmont, Wisconsin  
Town of Platteville, Wisconsin  
City of Pottsville, Iowa  
Phoenix, Arizona  
Scottsdale, Arizona  
Glendale, Arizona  
Peoria, Arizona  
Maricopa, Arizona  
Chandler, Arizona  
Buckeye, Arizona  
Maricopa, Arizona  
County of Maricopa, Arizona  
County of Pinal, Arizona  
Surprise, Arizona  
Florence, Arizona  
Tempe, Arizona  
Paradise Valley, Arizona  
Gilbert, Arizona  
Mesa, Arizona  
Queen Creek, Arizona  
Bellevue, Washington  
Portland, Oregon  
Omaha, Nebraska  
Sarpy County, Nebraska  
Douglas County, Nebraska  
Springfield, Nebraska  
Colorado Springs, Colorado  
Fountain, Colorado  
Monument, Colorado  
El Paso County, Colorado  
Lone Tree, Colorado  
Douglas County, Colorado

# Remote Quick Guide



- 1** Press and hold **SETUP** for 3 seconds. The device will blink twice.
  - 2** Press the mode key for the setup you wish to set up. The mode key will stay lit.
  - 3** Press and hold the **OK** key. Release the device when your device turns off.
  - 4** Repeat Steps 1-3 for each additional device.
- If you encounter any issues with your device setup, refer to the MX4 IR Remote Control User's Guide for additional setup instructions/options (see Setup Methods A and B).

## How to set up your remote:

Prism Sales

877.628.3617

Prism Support and Repair

866.314.4148



PHX-CLU 11/12

# See TV in a whole new light.



CenturyLink® prism™

## Phoenix Channel Lineup

Channel lineup is subject to change. For the most up-to-date channel listing, please refer to the lineup at [seeprismtv.com](http://seeprismtv.com).

Prism™ TV	
113	TBS
121	Discovery Channel
125	USA Network
129	FX
135	E!
139	TV Land
141	Comedy Central
146	Spike TV
152	SYTY
156	BET
165	truTV
167	A&E
176	Hallmark Channel
179	ABC Family
180	WGN
182	Bravo
193	Mun2
202	CNN
203	HLN
210	FOX News Channel
215	MSNBC
216	CNBC
222	Bloomberg
225	The Weather Channel
230	C-SPAN
231	C-SPAN2
251	TLC
255	Travel Channel
266	National Geographic Channel
271	History
303	Disney Channel
314	Nickelodeon
326	Cartoon Network
327	Boomerang
337	Sprout
361	Lifetime Television
362	LMN
364	Lifetime Real Women
368	Oxygen
420	GVC
422	Home Shopping Network
424	ShopNBC
428	Jewelry Television
451	HGTV
453	Food Network
503	MTV
519	VH1
525	CMT
550	TBN (dual carriage)
562	EWTV
602	ESPN
603	ESPN Classic
605	ESPN2
630	NFL Network
634	MLB Network
638	NHL Network
641	Golf Channel
650	BTN
683	Pac 12 Arizona
762	FS Arizona
763	FS Arizona Plus
798	AMC
799	Reelz Channel
3004	Galavisión
3007	Telemundo (dual carriage)
3	3TV (KTVK)
4	KPHO Weather Now
5	CBS (KPHO)
6	The CW (KASW)
8	PBS (KAET)
9	PBS Create (KAETD12)
10	FOX (KSAZ)
11	City Cable 11
12	NBC (KPNX)
13	Arizona TV (KAZT)
14	Retro TV Network (KAZD12)
15	ABC (KNV)
17	Jewelry Television
18	QVC
19	Home Shopping Network
20	NBC Weather Plus (KPNXD12)
21	TBN (KPAZ)
27	ESPN
28	ESPN2
33	Univision (KTVW)
35	Unimas (KFRP)
39	Telemundo (KTAZ)
40	Exitos (KTAZD12)
41	Azteca America (KPDFCA)
44	TV44 (KPHELD)
45	MV Network TV (KUTP)
48	Daystar (KDTI)
51	ION (KPPX)
78	ASUtv
109	TNT

Prism™ TV continued on next page

**Digital Music Channels**

5101	MC Hit List
5102	MC Hip Hop & R&B
5103	MC Mix Tape
5104	MC Dance/Electronic
5105	MC Rap (uncensored)
5106	MC Hip-Hop Classics
5107	MC Throwback Jams
5108	MC R&B Classics
5109	MC R&B Soul
5110	MC Gospel
5111	MC Reggae
5112	MC Classic Rock
5113	MC Retro Rock
5114	MC Rock
5115	MC Metal (uncensored)
5116	MC Alternative (uncensored)
5117	MC Classic Alternative
5118	MC Adult Alternative (uncensored)
5120	MC Soft Rock
5121	MC Pop Hits
5122	MC 90s
5123	MC 80s
5124	MC 70s
5125	MC Solid Gold Oldies
5126	MC Party Favorites
5127	MC Stage & Screen
5128	MC Kids Only!
5129	MC Toddler Tunes
5130	MC Today's Country
5131	MC True Country
5132	MC Classic Country
5133	MC Contemporary Christian
5134	MC Sounds of the Seasons
5135	MC Soundscapes
5136	MC Smooth Jazz
5137	MC Jazz
5138	MC Blues
5139	MC Singers & Swing
5140	MC Easy Listening
5141	MC Classical Masterpieces
5142	MC Light Classical
5143	MC Musica Urbana
5144	MC Pop Latino
5145	MC Tropicals
5146	MC Mexicana
5147	MC Romances

**Prism™ Complete**  
Includes Prism™ TV Package channels, plus

132	Youtoo TV
149	G4
153	Chiller
157	TV One
161	Cloz
173	GSN
184	Logo
188	BBC America
189	Current TV
211	Fox Business Network
253	Animal Planet
257	Oprah Winfrey Network
258	SCIENCE
259	Military Channel
260	ID
272	Biography
274	H2

**Prism™ Premium**  
Includes Prism™ Complete Package channels, plus

305	Disney XD
307	Disney Junior
315	Nick 2
316	Nicktoons
320	Nick Jr
322	Teen Nick
335	The Hub
373	WE tv
381	Style Network
454	DIY Network
456	Cooking Channel
465	Destination America
466	Discovery Fit & Health
507	MTV2
509	TBS
509	MTV Hits
510	MTV U
515	Centric
521	VH1 Classic
522	VH1 Soul
527	CMT Pure Country
529	Great American Country
531	Ovation
535	Fuse
564	Inspiration Network
567	BYU TV
604	ESPN News
605	ESPN
640	NBC Sports
642	Sportsman Channel
647	FOX College Sports Atlantic
648	FOX College Sports Central
649	FOX College Sports Pacific
652	Speed
654	FOX Soccer
680	Outdoor Channel
788	Movie Plex
790	Turner Classic Movies
792	FOX Movie Channel
794	Hallmark Movie Channel
798	IFC

**Prism™ HDTV**

852	Showtime (E)
853	Showtime (W)
854	Showtime Too
856	Showtime Showcase
858	Showtime Extreme
860	Showtime Beyond
862	Showtime Family
864	Showtime Next
866	Showtime Women
880	Showtime On Demand
882	TMC (E)
883	TMC (W)
884	TMC Xtra
888	TMC On Demand
890	Flix
892	Flix On Demand
902	Starz (E)
903	Starz (W)
904	Starz (E) Edge
906	Starz: In Black
908	Starz: Cinema
912	Starz: Kids and Family
931	Starz: On Demand
932	Encore (E)
933	Encore (W)
934	Encore Love
936	Encore Suspense
940	Encore Action
942	Encore Westerns
944	Encore Drama
951	Encore On Demand

**Prism™ HDTV**

106	Pay Per View Events HD
1003	3TV HD (KTVK)
1005	CBS HD (KPHO)
1006	The CW HD (KASW)
1008	PBS HD (KAET)
1010	FOX HD (KSAZ)
1012	NBC HD (KPNX)
1013	Arizona TV HD (KAZT)
1015	ABC HD (KNXV)
1033	Univision HD (KTVA)
1039	Telemundo HD (KTAZ)
1051	My Network TV HD (KUTP)
1051	ION HD (KPPX)
1101	Pay Per View Events HD
1102	Velocity HD
1104	Universal HD
1105	AXS TV
1106	HDNet Movies
1108	TNT HD
1113	TBS HD
1120	Discovery Channel HD
1124	USA Network HD
1128	FX HD
1134	FX HD
1141	Comedy Central HD
1145	Spike TV HD
1148	G4 HD
1151	Syfy HD
1155	BET HD
1164	truTV HD
1166	A&E HD
1176	Hallmark Channel HD
1178	ABC Family HD
1180	WGN HD
1181	Bravo HD

**Prism™ Paquete Latino**

1338	ThrillerMAX HD
1850	Cinemax HD On Demand
1852	Showtime HD (E)
1853	Showtime HD (W)
1880	Showtime HD On Demand
1884	TMC Xtra HD
1888	TMC HD On Demand
1892	Flix HD On Demand
1902	Starz: HD
1903	Starz: HD
1951	Starz: HD On Demand
1951	Encore HD On Demand

**International Programming**

3603	China Central TV
3604	CTI-Zhong Tian Channel
3680	TV Japan
3681	The Filipino Channel
3682	Filipino On Demand
3702	Zee TV
3703	TV Asia
3704	Sony TV
3706	STAR India PLUS
3710	Bollywood Hits On Demand
3802	Rai Italia
3822	TV5 Monde
3822	Channel One Russia

**Select Programming**

1	Video On Demand
90	Prism Applications
101	Pay Per View Events
106	Pay Per View Events HD
201	Prism News
301	Prism Kids
411	CenturyLink Information
601	Prism Sports
629	NFL RedZone (PPV)
1101	Pay Per View Events HD
1629	NFL RedZone HD (PPV)
9001	FOX Sports PPV
9200	RedZone Ordering Channel
9999	DVR

▲ Must subscribe to the corresponding standard channel packages

Some channels may require subscription to a larger channel package at an additional charge

**CenturyLink has the ability to raise rates and change Services, with notice to Customers in certain instances. See Section 1(E) for applicable terms and conditions.**

**CENTURYLINK® PRISM™ TV SERVICES  
RESIDENTIAL CUSTOMER AGREEMENT**

The following terms and conditions will govern your use of digital television services, marketed as "Prism™ TV" (whether subscription based or pay-per-view based) and any other services that CenturyTel Broadband Services, LLC (or the applicable CenturyLink operating company providing the Services described in this Agreement in your service area) ("Company") provides via a digital television platform (collectively, "Services"). This Residential Customer Agreement ("Agreement") will remain in full force and effect until terminated as provided for in the terms and conditions below. For purposes of this Agreement, the terms "we" or "us" or "our" refer to Company. For purposes of this Agreement, the terms "you" or "your" refer to you, the Services subscriber, including all other members and/or guests of the residential household.

**THIS AGREEMENT DESCRIBES THE TERMS AND CONDITIONS UNDER WHICH WE WILL PROVIDE SERVICES AND EQUIPMENT TO YOU. You should carefully read all terms in this Agreement, including the Mandatory Arbitration of disputes provision.**

IF YOU DO NOT ACCEPT THESE TERMS AND CONDITIONS, PLEASE NOTIFY US IMMEDIATELY AND WE WILL CANCEL YOUR SERVICES. SHOULD YOU FAIL TO NOTIFY US IMMEDIATELY OF YOUR NONACCEPTANCE, YOU AGREE THAT THESE TERMS AND CONDITIONS WILL BECOME LEGALLY BINDING UPON YOU. IF YOU ARE A NEW SERVICES CUSTOMER, YOUR ACTIVATION OF A SERVICES ACCOUNT AND RECEIPT OF SERVICES AND EQUIPMENT WILL CONSTITUTE YOUR ACCEPTANCE OF THIS AGREEMENT, AND ITS TERMS AND CONDITIONS WILL BE LEGALLY BINDING UPON YOU.

**1. SERVICES**

**A. Services Defined.** For purposes of this Agreement, Services mean the programming available on Prism TV (whether subscription based or pay-per-view based) and any other services that we may provide via that TV platform to consumers either now or in the future unless otherwise defined in a future agreement.

**B. Programming Availability.** Certain Services transmitted by us, including but not limited to some subscription Services, sporting events and broadcast network Services, may be blacked out in your area of reception. If you circumvent or attempt to circumvent any of these blackouts, you may be subject to legal action

**C. Viewing Restrictions.** Services are provided to you for your private home viewing, use and enjoyment. You agree that the Services provided will not be viewed outside of your private residence. You are permitted to exhibit the Services solely in your private residence and not in any other areas. The Services may not be rebroadcast, transmitted, recorded in an unauthorized manner, or performed, nor may admission be charged for listening to or viewing any Services provided by us. If we later determine that you utilized your Equipment (as defined in Section 4 and including any additional set-top box receivers), or sold, leased or otherwise gave possession of the same to a third party whom you knew or reasonably should have known intended to use such Equipment to permit the viewing of the Services in a commercial establishment or any other area open to the public, we may terminate the Services and in addition to all other applicable fees, you agree to pay us the difference between the price actually paid for the Services and the full commercial rate for such Services, regardless of whether we have or had the commercial rights to such Services. The payment of that amount and/or the termination of Services will not prejudice our ability to exercise any other rights and remedies we may have under this Agreement, at law, in equity, or otherwise. **In our sole discretion and without liability to you, we may place restrictions on use of your Services, and immediately disrupt, suspend, or terminate your Services without notice for violations, suspected violations, or to prevent violations of this Agreement.**

**D. Additional Set-Top Box Receivers.** To independently tune additional televisions within your residential premises, a separate tuner is required for each television. The Service includes a modem and one (1) set-top box receiver or such a number necessary to deliver the Services. Each additional set-top box receiver would be authorized to receive the same Services as your initial set-top box receiver. We will charge you an additional set-top box receiver monthly fee for each additional set-top box receiver added to your account. If you desire to receive Services at multiple residences (including multiple residences within your dwelling), you must open a separate account for each residence. You agree that you will not directly or indirectly use a single account for the purpose of authorizing Services for multiple set-top box receivers that are not all located in the same residence. If we later determine that you have violated the terms of this section, we may terminate your Services and, in addition to all other applicable fees, you agree to pay us the difference between the amounts actually received by us and the full retail price for the Services authorized for each set-top box receiver on the account, whether owned by you or not. The payment of that amount and/or the termination of Services will not prejudice our ability to exercise any other rights and remedies we may have under this Agreement, at law, in equity, or otherwise.

**E. Changes in Services or this Agreement.** We reserve the right to change the terms of this Agreement, the Services, and our prices or fees related to the Services at any time. If the change is material, we will provide you written notice of the change and its effective date. The notice may be provided on your billing statement or by other, reasonable method of notice at our sole discretion, which may include bill inserts, separate mailings to you, email notification, recorded announcement, or posting of changes to terms and conditions, which terms and conditions are accessible through <http://www.centurylink.com/Pages/AboutUs/Legal> We will not provide notice of changes to applicable taxes or surcharges, unless required by law or regulation. We will not provide notice to you regarding price decreases or the expiration of promotional pricing, offers, and terms. Changes will become effective on the date described in any notice. In the event of a change in the contents of any programming, programming packages or other Services, you understand and agree that we have no obligation to replace or supplement the programming, programming packages or other Services previously offered that have been deleted, rearranged or otherwise changed. You further understand and agree you will not be entitled to any refund because of a change in the contents of any programming, programming packages, or other Services previously offered. **Your continued use of the Services after any change constitutes your acceptance of any such changes in Services, prices, terms, or conditions, and the revised Agreement. Your sole remedy for any material changes made by us is your right to cancel the affected Service or terminate this Agreement**

**F. Repair of Services.** You agree to contact us for any technical and other customer support issues through the toll free numbers provided to you during installation of the Services and Equipment.

**G. Permission to Install Services and Equipment; Access; Site Preparation.** You represent and warrant that you have all rights necessary to authorize our installation and support of the Services and Equipment, including the approval to install and provide the Services and Equipment from any landlord or property owner other than you. You will provide access to us upon our request during all hours consistent with the requirements of installation, repair and provision of Services, and you further grant to us and our subcontractors the limited right to come onto your property in your absence and without your prior consent in order to perform maintenance on our facilities located outside or on the exterior of your residence. You will obtain any approvals, licenses, or permits, if necessary, prior to our installation of the Services and Equipment. You will prepare your site(s) to comply with Equipment manufacturer's or our installation and maintenance specifications. You warrant that your premises are free of asbestos (whether encapsulated or exposed) and other hazardous materials as defined by federal or state law. If this warranty cannot be made prior to installing Services or Equipment, we will, in addition to any other legal or equitable remedies, (a) decline to make any Service or Equipment installations in areas known or suspected of containing hazardous materials; or (b) unilaterally make an adjustment to the purchase price to reflect any increased costs for performance because of known or suspected hazardous materials on the premises.

**H. Physical Address.** When setting up your Services account, you agree to provide us with the physical street address where the Equipment will be located, and the physical street address that will

constitute your billing address. A post office box does not constitute a physical address and is not sufficient to meet this requirement.

## 2. BILLING

**A. Charges.** We will bill you for Services on a monthly basis based on current prices and charges provided to you or posted to <http://www.centurylink.com>, and listed in any written information that we send to you. In the event of conflict among these prices and charges, the most-current prices and charges govern. You agree to pay these charges and also, if applicable, any activation fees, installation charges (including charges related to unique installation requirements at your location or residence), Equipment charges, connection charges, usage charges, monthly fees, monthly minimums, other fees, surcharges, taxes and federal, state and local government or quasi-government imposed or permitted charges. Taxes and government surcharges will be in the amounts that federal, state, and local authorities require or permit us to bill you. You agree to pay all taxes, franchise fees, surcharges, assessments, and other fees that are related to the Services or Equipment and included on your invoice or bill, unless you are exempt from these payments and provide documentary evidence of such exemption to us. Upon the cancellation or termination of Services for any reason prior to the end of a billing cycle, we will charge you the pro-rated monthly recurring charges for Services during the billing cycle (along with all applicable nonrecurring charges, taxes, franchise fees, surcharges, and other fees).

**B. Billing.** Monthly recurring charges ("MRCs") for your Services begin accruing when the Services are available for your use. You may be invoiced a prorated portion of any MRCs in the initial month of service. MRCs may be billed in arrears or in advance, depending on the Services, while monthly usage charges are generally billed in arrears. If your monthly charges net to \$0, you may not be mailed a paper invoice. Invoice information will remain available in your account information located at <http://www.centurylink.com> or by calling us at the customer service number listed on your invoice, and an additional fee may be charged for invoice reprints.

**C. Payment.** You must pay all charges applicable to your Services, including all applicable taxes, fees, activation fees, and surcharges, in U.S. currency. Your payment due date will be set forth on your invoice. We may charge you late payment fees or interest on those charges equal to the maximum rate allowed by law for all late payments. The interest will be applied to the entire unpaid balance. If we don't receive your payment before the next billing cycle, you agree to pay any costs and expenses associated with our collections efforts, including attorneys' fees. We may charge you an insufficient funds or returned check fee, up to the maximum rate allowed by law, if your check, bank draft, electronic funds transfer, or other order for payment is dishonored or returned for insufficient funds or any other reason. Our acceptance of late or partial payment (even those marked, "PAID IN FULL") and late payment charges will not constitute waiver of any of our rights to collect the full amount due under this Agreement.

**D. Disputed Charges.** Except as otherwise provided by applicable law, disputes concerning any charges invoiced must be raised within 30 days of the invoice date. You accept all charges not disputed within 30 days. Company and its customers waive all rights of subrogation against each other in connection with Services. To dispute a charge on your invoice, you must follow the dispute procedures in this Agreement.

**E. Credit Check; Deposits; Credit Limits.** Our provision of Services to you is subject to our approval of your credit. You give us permission to check and verify your credit as needed in our sole discretion. If we determine you are a credit risk at any time during your Service period with us, we may require that you submit a deposit or make an advance payment to us in a reasonable amount that we determine, including specific, additional deposits for Equipment. If you fail to pay for Services when due, we may, without providing notice to you, apply your deposit or advance payment to the amount owed. If you refuse to make a deposit or advance payment or otherwise establish credit as provided by applicable state law, we reserve the right to refuse to provide you Service. As we determine in our sole discretion and to the extent permitted by applicable law, we may set a credit limit on your account at any time. We may restrict the Services to which you have access if you exceed this credit limit. Once you establish and maintain a sufficient credit history with us, we may, in our sole discretion, return all or part of your

deposits back to you in the manner we prescribe. Our deposit return policy related to Equipment only is described in Section 4 of this Agreement.

**F. Early Termination Fee.** If you signed up for a plan that required you to agree to a term commitment for Services, you hereby agree to pay for the service for that term ("Term Plan"). Your Term Plan begins on the installation date. At the end of any Term Plan you may be given the option to select a new Term Plan. If you do not select a new Term Plan, your Service will automatically convert to a month-to-month Services plan at a monthly fee that may be higher than your current rate. If you select a new Term Plan, the terms of that plan will apply. EXCEPT AS OTHERWISE SET FORTH IN THIS AGREEMENT, IF YOUR SERVICES UNDER A TERM PLAN ARE TERMINATED BY YOU OR BY US BEFORE COMPLETING THAT TERM PLAN, THEN YOU AGREE TO PAY COMPANY THE FOLLOWING EARLY TERMINATION FEE: either (a) an amount equal to \$10 multiplied by the number of months remaining in the then-current term commitment, or (b) such other amount as may be identified to you in a promotional offer (each an "Early Termination Fee"). The Early Termination Fee described in this section represents our reasonable liquidated damages and is not a penalty.

### **3. CANCELLATION OF SERVICE**

**A. Services Provided Month-to-Month or Under a Term Commitment.** We provide Services and Equipment on either a month-to-month basis or under a term commitment. "For Services and Equipment offered on a month-to-month basis or under a Term Plan, this Agreement applies until either party terminates Services or the Term Plan expires. If you continue to purchase Services and Equipment on a month-to-month basis after completion of the applicable Term Plan, this Agreement will continue to apply to such Services and Equipment.

**B. General Right to Cancel Services.** We or you have the right to cancel the Services for any reason at any time by notifying the other, including by providing written notice to the other as described in Section 9(A) of this Agreement. But the method by which you may terminate Services depends on whether you are terminating Services only or all or a portion of Company services (including Services). If you are terminating Services only, you must return the Equipment by following the process described in Section 4 of this Agreement. You cannot terminate Services only via any other method. If you are terminating all or a portion of Company services (including Services), you may terminate either by (1) returning the Equipment to a Company retail store and requesting termination at that time, or (2) calling the provided Company customer service number and terminating such services (including Services). Please note that using method (2) above to terminate services (including Services) does not change your obligation, as described in Section 4, to return Equipment to Company or require Company to return any Equipment deposits to you until the Equipment is returned to us. In all instances, we reserve the right to assess you the Early Termination Fee, when applicable, as described in this Agreement.

**C. Company's Right to Cancel Services.** We have the right to terminate your Services at any time without providing notice to you if: (1) you fail to pay your bill in full when it is due; (2) we receive confirmation that you have received the Services, or any part of the Services, without paying for them; or (3) you otherwise violate the terms of this Agreement. In all instances, we reserve the right to assess you the Early Termination Fee, when applicable, as described in this Agreement.

**D. Payment Responsibilities after Cancellation of Service.** If your Service is cancelled for any reason, you are still responsible for payment of all outstanding balances accrued, including any applicable taxes, franchise fees, other fees, and surcharges. You are also responsible for the Early Termination Fee described in Section 2 above, if applicable.

**E. Force Majeure.** We will not be responsible for any delay, interruption, or other failure to perform under the Agreement due to acts beyond our control. Force majeure events include, but are not limited to: natural disasters (e.g. lightning, earthquakes, hurricanes, floods); wars, riots, terrorist activities, and civil commotions; inability to obtain parts or equipment from third party suppliers; cable cuts by third parties, a local exchange carrier's activities, and other acts of third parties; explosions and fires; embargoes, strikes, and labor disputes; and governmental decrees and any other cause beyond our reasonable control.

#### 4. **EQUIPMENT**

**A. Installation.** In order for you to receive the Services, it will be necessary for us to install certain reception equipment consisting primarily of a modem, one set-top box receiver per TV installed, and any software (collectively, "Equipment"). The standard installation includes up to 4 set-top boxes per customer account during the initial installation meeting. Additional installation charges will be assessed for each set-top box beyond the initial 4 set-top boxes installed during the initial installation meeting. Additional installation charges also will be assessed for each set top box installed during subsequent installation meetings. A maximum of 8 set-top boxes may be placed on a single customer account. You will provide reasonable cooperation to enable us or our agents to install or repair the Equipment. The set-top box receiver is configured with digital rights management capability designed to prevent unauthorized duplication of copyrighted material. Tampering or other unauthorized modification to the set-top box receiver or the digital rights management capability is strictly prohibited and may result in, and subject you to, legal action.

**B. Software.** We reserve the right to alter software in your set-top box receiver through periodic downloads. We will use commercially reasonable efforts to schedule these downloads in a manner that results in the least amount of interference with or interruption of your Services.

**C. Set-Top Box Receiver.** Your set-top box receiver contains certain components and software which are proprietary to us or our suppliers. If you subscribe to DVR service, only one set top box receiver contains a DVR hard drive. You agree that you will not try to reverse-engineer, decompile or disassemble any software or hardware contained within your set-top box receiver or modem. Such actions are strictly prohibited and may result in the termination of your Services and/or legal action.

**D. Loss of Equipment.** If your Equipment is stolen or otherwise removed from your premises without your authorization, you must notify our Customer Service Center immediately, but in any event, not more than three (3) business days after such removal to avoid liability for payment for unauthorized use of the Equipment. You will not be liable for unauthorized use that occurs after the date upon which we have received your timely notification.

**E. Equipment Ownership.** Equipment will at all times remain our sole and exclusive property and we will have the right, at our discretion, to replace it with new or reconditioned equipment and to remove the Equipment upon cancellation or termination of Services. None of the Equipment will be deemed fixtures or part of your realty. Our ownership of the Equipment may be displayed by notice contained on the Equipment. You will have no right to pledge, sell, mortgage, give away or remove, relocate, alter or tamper with the Equipment (or any notice of our ownership thereon) at any time. Any work related to Equipment that we perform, including reinstallation, return of, or change in location of the Equipment, will be at the service rates in effect at the time of service. You will not attach any electrical or other devices to or otherwise alter the Equipment without our prior written consent. We have the right to make such filings as are necessary to evidence our ownership rights in the Equipment, and you agree to execute any and all documents as are necessary for us to make such filings.

**F. Equipment Return following Service Cancellation or Termination; Return of Equipment Deposits.** Upon cancellation or termination of Services for any reason, Equipment must be returned to us as described below.

(1) **Equipment Return:** You must return all Equipment to Company either (a) via direct return to the retail store (if Company advises you this option is available in your area); or (b) via a Company-designated delivery service. For return via delivery service, Company will send to your residence a box and a shipping label. Please put your equipment inside the box and place the shipping label on the outside of the box. You can drop the box at the designated delivery service location in your area. You can also call the designated delivery service and make arrangements for them to pick up the box. You will be responsible for charges related to the pickup of the box.

(2) **Applicable Charges.** Equipment that is not returned to us, Equipment that is returned later than 30 days following Service cancellation or termination or such other date specified by CenturyLink, or Equipment returned to us in a damaged condition, will result in additional charges to you. We reserve the right to determine, in our sole discretion, whether Equipment is damaged. We will apply the charges described in this section, and any additional, applicable charges, if Equipment is returned in a damaged condition.

(3) **Deposit Return.** If you provided a deposit for the Equipment, and we have not already returned it to you, and you are terminating all or a combination of Company services (including Services), we will return the deposit to you via invoice credit for the undamaged Equipment you actually return to the Company via the process specified in sections (1) and (2) above. If you provided a deposit for the Equipment, and we have not returned it to you, and you are terminating only Services, you must request (in writing or verbally to an authorized Company representative) that we refund the Equipment deposit to you. If you make such request, we will return the deposit to you via invoice credit for the undamaged Equipment you actually return via the process specified in sections (1) and (2) above. We reserve the right to determine, in our sole discretion, whether Equipment is damaged. We will not return deposits for damaged Equipment.

**G. Damage to Equipment.** You will notify us promptly by providing written notice to CenturyLink as described in Section 9(A) of this Agreement of any defect in, damage to, or accident involving the Equipment. All maintenance and repair of the Equipment will be performed by us or our designees. We may charge you for any repairs that are necessitated by any damage to, or misuse of, the Equipment. You are responsible for damage to the Equipment and Services located on your premises, excluding reasonable wear and tear or damage that we directly cause.

**H. Software License Agreements.** To utilize any licensed software associated with the Services or Equipment, you must agree to applicable software license agreements governing such software from our software vendors. If you decline, you will not be able to use the Services or Equipment. All software license agreements are between you and our software vendors. We have no obligations or responsibility for such software. Your sole rights and obligations related to such software, in any way, are governed by the terms of your software license agreements with our vendors. You are responsible for any software not provided by our software vendors, including installation, operation, and maintenance. If any of your software impairs the Services, Equipment, or any of our products or services, we may suspend or disconnect the Services in our sole discretion, and you will immediately cure the problem upon notice. You also will continue to pay us for Services during any such impairment or Service suspension. Company and our software vendors have no liability if changes in Services or Equipment causes any of equipment or software you have provided to become obsolete, require alteration, or perform at lower levels.

**I. Electrical Wiring.** You are responsible, at your expense, for all ground wire connections at your premises. You will also ensure availability of a separate electric source, circuits and power with suitable outlets. You will pay the cost of electricians or conduit, if required.

**J. Proper Use.** You will properly use Equipment and will not, nor will you permit or assist others to, use Equipment for any purpose other than its intended purpose, fail to maintain a suitable environment according to the manufacturer's specifications, or tamper with Equipment. If you fail to comply, you will release us from our performance and liability obligations (including any warranty or indemnity obligations) to you and you will pay us all costs or damages we incur as a result of your breach.

**K. Non-Company Equipment.** You are solely responsible for the compatibility and non-infringing use of any equipment not acquired from us that you add to, or otherwise used in conjunction with Equipment we provide. Your use or combination of non-compatible or infringing equipment will, at our option, void any remaining warranty as to any item we provide that is adversely affected.

**5. TRANSFER OF ACCOUNT, SERVICES OR EQUIPMENT; VACATION SERVICES.**

**A. Transfer and Assignment.** We may sell, assign or transfer your account to a third party without notice to you. You may not assign or transfer your Services without our written consent.

**B. Vacation Service.** We offer a vacation option for Services. You must contact Company customer service and request to activate this option. We will keep the vacation option on your account until you notify us, up to a maximum of 6 months from the date that we activate the vacation option. Under the vacation option, no Service will be available. But all Services will remain on your account and we will invoice you for the current monthly recurring charge for Services under the vacation option. We will not invoice you for Service features during the vacation period, but all applicable taxes, fees, and surcharges will continue to be assessed while you are on the vacation option.

**6. LIMITATIONS OF LIABILITY**

**A. Disclaimer of Warranties.** COMPANY WILL NOT BE RESPONSIBLE OR LIABLE FOR ANY INTERRUPTIONS IN SERVICE OR ANY DELAY OR FAILURE TO PERFORM. COMPANY WILL NOT BE RESPONSIBLE OR LIABLE FOR ANY DAMAGE RESULTING FROM LOSS OF RECORDED MATERIAL OR THE PREVENTION OF RECORDING DUE TO ANY FAULT, FAILURE, DEFICIENCY OR DEFECT IN SERVICES OR EQUIPMENT. COMPANY PROVIDES ALL EQUIPMENT AND SERVICES "AS IS" AND MAKE NO WARRANTY, EITHER EXPRESSED OR IMPLIED, REGARDING OUR EQUIPMENT OR ANY SERVICES FURNISHED TO YOU. ALL SUCH WARRANTIES ARE EXPRESSLY DISCLAIMED.

**B. Direct Damages.** Company is not liable for any damages arising out of or in connection with any: (i) act or omission by you, or another person or company; (ii) provision or failure to provide Services, including deficiencies or problems with any Equipment used in connection with the Services, our networks or Services (for example, transmission failures, interruptions in Service, etc.); (iii) content or information accessed while using our Services or Equipment; or (iv) interruption or failure in accessing or attempting to access Services or information through your use of the Services, including any failures caused by Equipment. IF, FOR ANY REASON, COMPANY IS FOUND TO BE RESPONSIBLE TO YOU FOR MONETARY DAMAGES RELATING TO ANY SERVICES OR EQUIPMENT OBTAINED THROUGH COMPANY AND IF THIS LIMITATION IS FOUND TO BE UNENFORCEABLE FOR ANY REASON, YOU AGREE THAT ANY SUCH DAMAGES WILL NOT EXCEED THE PRO-RATED MONTHLY RECURRING CHARGES FOR THE AFFECTED SERVICES DURING THE AFFECTED PERIOD.

**C. NO CONSEQUENTIAL OR OTHER DAMAGES.** UNDER NO CIRCUMSTANCES IS COMPANY LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE OR SPECIAL DAMAGES OF ANY NATURE WHATSOEVER ARISING OUT OF OR IN CONNECTION WITH PROVIDING OR FAILING TO PROVIDE SERVICES OR ANY EQUIPMENT USED IN CONNECTION WITH THE SERVICES, WHETHER IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR REVENUE, LOSS OF OPPORTUNITY, OR COST OF REPLACEMENT SERVICES.

**D. Indemnification.** You will indemnify and defend Company, its directors, officers, employees, affiliates, subsidiaries, agents, and their successors and assigns from and against all claims, damages, losses, or liabilities, including reasonable attorneys' fees, arising from or relating to any Services or Equipment, or any act or omission by you related to any Services or any person you authorize or permit to use any Services or Equipment, including incorrect or misleading information, libel, slander, invasion of privacy, identity theft, intellectual property infringement, and any defective Services or Equipment.

**E. Infringements.** You understand that you may be held liable under both civil and criminal law for infringements of the intellectual property rights of others, including liability for damages, fees, attorney's fees, and criminal liability including fines and imprisonment.

**F. Other Users.** It is your responsibility to impose any restrictions on viewing by you, other members of your household, or guests, and we will have no liability to anyone due to or based on the content of any of the Services furnished to you.

**G. Survival.** All provisions of these limitations of liability section will survive and continue to apply after this Agreement is canceled or terminates.

**7. WARNING AGAINST PIRACY.** It is a violation of federal and state laws to receive any Services, or any portion of such Services, without paying for them.

**8. DISPUTE RESOLUTION**

**A. Dispute Process.** If you have a dispute with us relating to any matter, you agree to first notify customer service at the number listed on your invoice or to write us at 5454 W. 110<sup>th</sup> Street, Overland Park, KS 66211, Attn: Senior Assistant General Counsel, Commercial Law, in an attempt to resolve your dispute. You must describe your dispute with specificity and provide us with any supporting documentation. If we have a dispute with you, we will notify you in writing sent to your billing address in an attempt to resolve the dispute. If after following this process, either party is unable to resolve its dispute within 60 days of notifying the other party, either party may take the dispute to small claims court, if appropriate under applicable state or local rules or laws. Alternatively, either party may pursue the dispute only as set forth below.

**B. MANDATORY ARBITRATION OF DISPUTES. INSTEAD OF SUING IN COURT, YOU AND COMPANY AGREE TO ARBITRATE ANY AND ALL CLAIMS, CONTROVERSIES OR DISPUTES OF ANY KIND ("CLAIMS") AGAINST EACH OTHER. THIS INCLUDES BUT IS NOT LIMITED TO CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT, AS WELL AS CLAIMS ARISING OUT OF OR RELATING TO COMPANY'S SERVICES, BILLING OR ADVERTISING, OR ARISING OUT OF OR RELATING TO EQUIPMENT YOU OR COMPANY MAY USE IN CONNECTION WITH COMPANY'S SERVICES. THE REQUIREMENT TO ARBITRATE APPLIES EVEN IF A CLAIM ARISES AFTER YOUR SERVICES HAVE TERMINATED; APPLIES TO ALL CLAIMS YOU MAY BRING AGAINST COMPANY'S EMPLOYEES, AGENTS, AFFILIATES OR OTHER REPRESENTATIVES; AND APPLIES TO ALL CLAIMS THAT COMPANY MAY BRING AGAINST YOU. THE FEDERAL ARBITRATION ACT, NOT STATE LAW, APPLIES TO THIS AGREEMENT RELATED TO DISPUTE RESOLUTION AND GOVERNS ALL QUESTIONS OF WHETHER A CLAIM IS SUBJECT TO ARBITRATION. THIS PROVISION DOES NOT PREVENT EITHER YOU OR COMPANY FROM BRINGING APPROPRIATE CLAIMS IN A SMALL CLAIMS COURT HAVING VALID JURISDICTION, OR BEFORE THE FEDERAL COMMUNICATIONS COMMISSION OR A STATE PUBLIC UTILITIES COMMISSION.**

YOU AND COMPANY FURTHER AGREE THAT NEITHER COMPANY NOR YOU WILL JOIN ANY CLAIM WITH A CLAIM OR CLAIMS OF ANY OTHER PERSON(S) OR ENTITY(IES), WHETHER IN A LAWSUIT, ARBITRATION, OR ANY OTHER PROCEEDING. YOU AND COMPANY AGREE THAT NO CLAIMS WILL BE ASSERTED IN ANY REPRESENTATIVE CAPACITY ON BEHALF OF ANYONE ELSE, THAT NO CLAIMS WILL BE RESOLVED ON A CLASS-WIDE OR COLLECTIVE BASIS, THAT NO ARBITRATOR OR ARBITRATION FORUM WILL HAVE JURISDICTION TO ACCEPT OR DETERMINE ANY CLAIMS ON A CLASS-WIDE OR COLLECTIVE BASIS, AND THAT NO RULES FOR CLASS-WIDE OR COLLECTIVE ARBITRATION WILL APPLY. THIS PARAGRAPH AND EACH OF ITS PROVISIONS ARE INTEGRAL TO, AND NOT SEVERABLE FROM, THIS SECTION ON MANDATORY ARBITRATION OF DISPUTES.

A single arbitrator engaged in the practice of law will conduct the arbitration. The arbitration will be filed with and the arbitrator will be selected according to the rules of the CPR Institute for Dispute Resolution ("CPR") and 9 U.S.C. Sec. 1, et. seq. We agree to act in good faith in selecting an arbitrator. Except as expressly provided in the preceding paragraph, the arbitration will be conducted by and under the then-applicable rules of CPR and United States Code, wherever the arbitration is filed or, if the arbitrator is chosen by mutual agreement of the parties, the then-applicable rules of CPR will apply unless the parties

agree otherwise. All expedited procedures prescribed by the applicable rules will apply. We agree to pay our respective arbitration costs, except as otherwise required by rules of CPR, as applicable, but the arbitrator can apportion these costs as appropriate. The arbitrator's decision and award is final and binding, and judgment on the award may be entered in any court with jurisdiction.

**IF FOR ANY REASON, THE ABOVE PROVISIONS ON ARBITRATION ARE HELD UNENFORCEABLE OR ARE FOUND NOT TO APPLY TO A CLAIM, YOU AND COMPANY AGREE TO WAIVE TRIAL BY JURY.** If any party files a judicial or administrative action asserting a claim that is subject to arbitration and another party successfully stays such action or compels arbitration, the party filing that action must pay the other party's costs and expenses incurred in seeking such stay or compelling arbitration, including attorneys' fees.

**Except as expressly provided above, if any portion of this Mandatory Arbitration of Disputes section is determined to be invalid or unenforceable, the remainder of the section remains in full force and effect.**

#### **9. MISCELLANEOUS**

**A. Notice Methods.** If we send you a notice, it will be considered given when deposited in the U.S. Mail, addressed to you at your billing address or hand-delivered to you. Our notice to you will also be effective if provided on your billing statement or by telephone. If you give a notice to us, it will be deemed given when received at 5454 W. 110<sup>th</sup> Street, Overland Park, KS 66211, Attn: Vice President, Commercial Law.

**B. Applicable Policies.** You agree to comply with the Company Acceptable Use policy and Privacy Policy, posted to <http://www.centurylink.com> and incorporated by this reference, when you use Services. If you do not agree with the terms of these policies, do not purchase or use Services.

**C. Applicable Law.** This Agreement, including all matters relating to its validity, construction, performance and enforcement, will be governed by applicable federal law, the rules and regulations of the Federal Communications Commission, and the laws and regulations of the state and local area where Service is provided. The terms and conditions of this Agreement are subject to amendment, modification or termination if required by such regulations or laws. If any provision in this Agreement is declared to be illegal or in conflict with any law or regulation, that provision will be deleted or modified, as applicable, without affecting the validity of the other provisions.

**D. Not for Resale.** The resale of the Services or any other associated services by any and all means is strictly prohibited unless we approve in advance in writing.

**E. Other.** The terms and conditions of this Agreement, including all referenced documents and items incorporated here as posted to one of our websites, supersede all previous representations, understandings or agreements, and will supersede the terms and conditions of any order previously submitted, or prior price quoted. This Agreement contains the entire agreement between Company and you, and the written or oral statements of any salesperson, installer, customer service representative, authorized retailer, or other individual does not change the terms of this Agreement. The terms of this Agreement, which either are expressly stated to survive or by their nature would logically be expected to survive termination, will continue thereafter until fully performed. If either you or Company fails to enforce or waives any requirement under this Agreement that does not waive that party's right to later enforce that requirement in the future.